

No. 14245

United States
Court of Appeals
for the Ninth Circuit

JOHN R. CRANOR, Superintendent of the Wash-
ington State Penitentiary at Walla Walla,
Washington, Appellant,

vs.

ALBERT GONZALES, Appellee.

Transcript of Record

Appeal from the United States District Court for the Eastern
District of Washington, Southern Division

FILED

JUN 29 1954

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App

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INDEX

[Clerk's Note: When deemed likely to be of important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Affidavits in Support of Petition for a Writ of Habeas Corpus:	
Cecil Coluya	22
William Giron	18
Albert Gonzales	25
Appeal:	
Bond for Costs on	242
Certificate of Clerk to Transcript of Record on	244
Designation of Record on (Appellant's-DC) ..	243
Designation of Record on (Appellees'-DC) ..	244
Notice of	239
Statement of Points and Designation of Record on (USCA).....	247
Stipulation as to Previous.....	217
Application Petitions for a Writ of Habeas Corpus	4
Bond for Costs on Appeal.....	242
Certificate of Clerk to Transcript of Record... ..	244
Certificate of Probable Cause.....	241

Designation of Record (DC):	
Appellant's	243
Appellees'	244
Designation of Record, Statement of Points and (USCA)	247
Findings of Fact and Conclusions of Law.....	230
Judgment and Order	237
Judgment and Sentence (Superior Court, Case No. 25721):	
Cecil Coluya	211
William Giron	214
Albert Gonzales	213
Motion for Certificate of Probable Cause.....	240
Motion for Leave to File Affidavit in Support to Proceed in Forma Pauperis.....	3
Motion to Dismiss	16
Motion to File Additional Evidence in the Form of Exhibits	215
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	239
Opinion of the Court.....	218
Order Continuing Return Date on Show Cause Order	17
Order Granting Permission to File Additional Exhibits	216
Order to File in Forma Pauperis.....	4

Order to Show Cause	15
Petition for Reargument	230
Return and Answer.....	209
Statement of Points and Designation of Record (USCA)	247
Stipulation as to Previous Appeals.....	217
Transcript of Proceedings and Testimony.....	30
Opinion of Court, Oral.....	196
Wire Recording (Albert Gonzales).....	146
Witnesses:	
Gonzales, Albert	
—direct	41
—cross	58, 72
Ryan, P. H.	
—direct	94
—cross	96
Seth, Austin W.	
—direct	119, 171
—cross	175, 187
Thomas, Kenneth W.	
—direct	109
—cross	114

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State Attorney General, and

CYRUS A. DIMMICK,

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Olympia, Washington,

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Spokane, Washington,

Attorney for Petitioner-Appellee,

Albert Gonzales.



In the United States District Court for the Eastern
District of Washington, Southern Division

No. 739

WILLIAM GIRON, ALBERT GONZALES,
CECIL COLUYA, Petitioners,

vs.

JOHN R. CRANOR, et al., Superintendent of the
Washington State Penitentiary, Walla Walla,
Washington, Respondent.

MOTION FOR LEAVE TO FILE AN AFFIDA-
VIT IN SUPPORT TO PROCEED IN
FORMA PAUPERIS

Comes now the Petitioners William Giron, Albert Gonzales, Cecil Coluya, and moves the above entitled Court for leave to file their application for a Writ of Habeas Corpus, as petitioners believe they have basis for a Writ of Habeas Corpus. Petitioners pray for an order to the Clerk of said Court to file and proceed, and all orders will issue by this Court.

Your Petitioners are without means, funds, or property or income to pay filing fee, or any part thereof, and prays to proceed in Form Pauperis.

/s/ WILLIAM GIRON,
Petitioner Acting Pro Se

Witnesses: Signed: Arthur Hearne, Robert E. Le
Nois. [1*]

[Endorsed]: Filed November 7, 1952.

* Page numbering appearing at foot of page of original Certified Transcript of Record.

[Title of District Court and Cause.]

ORDER TO FILE IN FORMA PAUPERIS

It appears to the Court that the above named petitioners are desirous of filing a petition for a Writ of Habeas Corpus in this court under **Forma Pauperis**. It further appears that said petitioners have filed herein their affidavit, setting forth the facts concerning their poverty, and the Court is fully advised in the premises.

It is now, therefore, ordered and decreed that the clerk of this Court be, and he is hereby directed to receive and file the petition for Writ of Habeas Corpus of the above named petitioners, without payment of any fees.

Done by the Court this 7th day of November, 1952.

/s/ SAM M. DRIVER,
United States District Judge

[Endorsed]: Filed November 7, 1952. [2]

[Title of District Court and Cause.]

APPLICATION PETITIONS FOR A WRIT OF HABEAS CORPUS

To the Honorable Sam M. Driver, United States District Court Judge, for the Eastern District of Washington at Spokane. Petitioners William Giron, Albert Gonzales, Cecil Coluya, petitions for a Writ

of Habeas Corpus respectfully represents and shows; to-wit: and a show cause order will issue.

I.

That your petitioners are unlawfully imprisoned, detained, confined and restrained of their liberty by one John R. Cranor, as the Superintendent of the Washington State Penitentiary at Walla Walla.

II.

That such restraint and detention is not by reason of any final judgment of a court of competent jurisdiction, or by reason of any order adjudging your petitioners to be in contempt of any court, officer or other tribunal.

III.

That your petitioners are illegally and unlawfully imprisoned, detained, confined and restrained of their liberty by one John R. Cranor, as aforesaid, [3] under and by virtue of an alleged judgment of conviction and sentence entered on or about the 10th day of April, 1950, in the Superior Court of the State of Washington, for King County, following conviction by a jury of the charge of Murder in the First Degree, Case No. 25721, King County, Washington; trial judge was James W. Hodson, King County Superior Court.

IV.

That the said illegal judgment of conviction and sentence, and the commitment by virtue of which your petitioners are held, was obtained in violation

of the constitutional rights guaranteed to your petitioners by the Constitution of the United States and particularly of the 5th and 6th Amendments thereof, and also the Constitution of the State of Washington in this.

V.

Your petitioners allege: that contrary to rights guaranteed to them by the 5th, 4th, and 14th Amendments to the Constitution of the United States have all been violated to your petitioners in King County Washington by City Police and Trial Court and Prosecuting Attorney in this case and said Respondent.

VI.

Your petitioners have exhausted all State remedies, Case No. 32148 Supreme Court State of Washington, derived, also Writ of Certiorari Case No. 100 Supreme Court of these United States being denied on October 13, 1952. (See Exhibit A.)

Board of Prison Terms and Paroles members have not set a minimum sentence or have they saw any parole board members since arriving here.

Trial Judge ordered parole board to set a sentence which they did not do.

King County officials have used Coercion and Duress on your petitioners all against the Constitution of the United States.

VII.

The petitioners Albert Gonzales, William Giron, and Cecil Coluya, and each of them, were charged by information with the purported crime of murder

in the first degree, alleged to have been committed in King County on or about the 10th day of January, 1950. [4]

The trial dates were from the 20th day of March, 1950, through the 10th day of April, 1950, and on the last named date the jury returned a verdict of guilty as to each of the petitioners.

Following denial of a motion for a new trial, the petitioners were each sentenced on the 28th day of April, 1950, as follows:

“And no sufficient cause being shown or appearing to the Court, the court renders its judgment: That whereas the said Defendants having been duly convicted on the 10th day of April, 1950, in this Court of the crime of Murder in the First Degree, it is therefore Ordered, Adjudged and Decreed that the said Defendants are guilty of the crime of Murder in the First Degree and that they be punished by confinement at hard labor in the penitentiary of the State of Washington for a maximum term of not more than their Natural Life Years, and a minimum term to be fixed by the Board of Prison Terms and Paroles.”

The penalty for first degree murder is set forth in Rem. Rev. Stat., 2392, and it provides:

Murder in the first degree shall be punished by imprisonment in the State Penitentiary for life.

VIII.

At the time petitioners were sentenced, there was also in full force and effect Rem. Rev. Stat., 10249-2, which provides that when a person is con-

victed of a felony, except treason, murder in the first degree, carnal knowledge of a child under 10 years, the court shall fix the maximum sentence of such person only, and that shall be the maximum provided by the law for the crime for which such person was convicted.

IX.

Under 10249-2, *Supra*, the Board of Prison Terms and Paroles is authorized to fix the duration of confinement of all convicted persons, except those specifically exempted from the operation of the act as above set forth. See *In re Henry vs. Webb*, 121 Wash., Dec. 263, where the court held that the Board of Prison Terms and Paroles had no authority to fix a "duration of confinement" in the cases where convicted persons were sentenced for the crimes specifically excepted from the operation of 10249-2, *supra*. [5]

The 1951 Legislature amended this statute by adding to chapter 9.95 R.C.W., as derived from chapter 92, Laws of 1947, a new section which, so far as material here, reads:

"The Board of Prison Terms and Paroles is hereby granted authority to parole any person sentenced to the penitentiary or the reformatory, under a mandatory life sentence, who has been continuously confined therein for a period of twenty years (consecutive) less earned good time."

From the foregoing it is obvious that petitioners were convicted of first degree murder and sentenced as second degree.

Argument and Authorities

The petitioners contend that they were denied the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States, in that reversible errors were committed at their trial, and thereafter they were denied the right of appeal through no fault of their own. In order for the court to fully understand the grounds upon which these contentions are based, it is necessary for the petitioners to set forth the facts as are material to the questions involved.

Petitioner Gonzales was arrested on suspicion during the early hours of Saturday, January 7, 1950, and thereafter was held without charge by the Seattle Police Department until Tuesday, January 11, 1950. During this illegal detention, the police "beat" two confessions out of Gonzales. The second confession implicated petitioners Giron and Coluya in the shooting of one Fidel Molina. The trial judge, James W. Hodson, permitted the prosecuting attorney to use these confessions in order to obtain the convictions in questions. Without these confessions, the state was without sufficient evidence to obtain a first degree murder conviction, or any conviction.

Prior to the trial, petitioner Giron employed Attorney Will G. Beardslee to represent him at the trial, and also to prosecute an appeal in the event of conviction. For this service, Giron and his wife executed deeds to Beardslee covering an apartment located at 1314 East Terrace, Seattle, and the family home located at 552 16th Street, Seattle. After conviction, this attorney sold the apartment

house, and paid off a mortgage on the home, and deeded it back to the petitioner and his wife, and kept the balance of the money obtained from the sale of the apartment as his fee. [6]

Petitioner Gonzales was represented at the trial by Attorneys J. E. Freeley and D. Van Fredenberg. Arrangements was also made with these attorneys prior to the trial to take an appeal in the event of conviction.

Petitioner Coluya was represented at the trial by Attorney Will G. Beardslee, appointed by the Court.

In addition to using the confessions of Gonzales as evidence, Deputy Prosecuting Attorney F. A. Walterskirchen, in his opening statement to the jury, referred to Coluya as a "noted gunman". At the trial, Gonzales identified Police Officer Thomas as the person who "beat" the confessions out of him. Naturally, this was denied by Officer Thomas. However, the record of this case affirmatively discloses that the State used these confessions of Gonzales over the objections of the attorneys representing each of the petitioners.

In the cases of *Watts vs. State of Indiana*, 69 S. Ct. 1347; *Turner vs. Commonwealth of Pennsylvania*, 69 S. Ct. 1352; and *Harris vs. State of South Carolina*, 69 S. Ct. 1354, we find the following in Mr. Justice Jackson's opinion:

"In each case police were confronted with one or more brutal murders which the authorities were under the highest duty to solve. Each of these murders was witnessed, and the only positive knowledge

on which a solution could be based was possessed by the killer. In each there was reasonable ground to suspect an individual but not enough legal evidence to charge him with guilt. In each the police attempted to meet the situation by taking the suspect into custody and interrogating him. This extended over varying periods. In each, confessions were made and received in evidence at the trial. Checks with external evidence, they are inherently believable, and were not shaken as to truth by anything that occurred at the trial. Each confession (nee) Confessor was convicted by a jury and state courts affirmed. This Court sets all three convictions aside."

After reciting the foregoing facts, Justice Jackson said:

"A concurring opinion, however, goes to the very limit and seems to declare for outlawing any confession, however freely given, if obtained during a period of custody between arrest and arraignment—which, in practice means all of them."

The record in the case at bar affirmatively discloses that petitioner Gonzales was arrested on suspicion during the early morning hours of Saturday, January 7, 1950, and that he was held in custody without charge by the Seattle police until two confessions were obtained, and then transferred to the custody of the county authorities on Tuesday morning, January 11, 1950, and then charged with the purported crime of murder in the first degree. [7]

The record further discloses that the state used these confessions as evidence at the trial of petition-

ers over the objections of the petitioners, and that these confessions implicated petitioners Giron and Coluya in said crime.

Under the cases cited above, the petitioners have been denied the due process of law guaranteed to them by the Fourteenth Amendments to the Constitution of the United States, since the United States Supreme Court has likewise held in the case of *State vs. Ashcraft*, 322 U. S. 143, that if a coerced confession is used to convict co-defendants, that such conviction is void the same as the defendant's from whom the confession was obtained.

It is, therefore, respectfully submitted that under the recent decision of the United States Supreme Court in the case of *Dowd vs. Cook*, 95 S. Ct. 183, the State of Washington must permit petitioners an appeal under the equal protection clause of the Fourteenth Amendment, or they may apply to the Federal courts for an order discharging them from further custody.

In the *Dowd* case, one Lawrence E. Cook, brought Habeas Corpus proceedings in the United States District Court in 1948. After hearing evidence, the District Court found that in 1931 the petitioner Cook was convicted of murder in an Indiana court, and was sentenced to life imprisonment, and immediately confined in the state penitentiary. Within the six-month period allowed for appeal as of right by Indiana law, Cook prepared proper appeal papers. However, his efforts to file these documents in the state supreme court was frustrated by the warden acting pursuant to prison

rules. Subsequently, but after the six-month period had expired, the ban on sending papers from the prison was lifted and Cook unsuccessfully sought to have the state courts review his conviction by *coram nobis* in 1937, and by *habeas corpus* in 1945. In 1946 his petition to the Supreme Court of Indiana for a delayed appeal was denied.

On the foregoing findings, the Federal District Court held that there has been a denial of the equal protection of the law for which the State of Indiana provided no remedy, and ordered Cook's release from prison.

On Writ of Certiorari to the United States Court of Appeals, which court had affirmed the trial court's findings, the United States Supreme Court pointed out that in that Court the State of Indiana had admitted, as it must, that a "discriminatory denial of the statutory right of appeal is a violation of the Equal Protection Clause of the Fourteenth Amendment." [8]

The State of Indiana also contended that despite the denial of equal protection, that Cook was no longer entitled to relief because he "Waived" his right of appeal. The argument was that the ban on sending papers from the prison suspended the statutory limitation of the time for review so that respondent could have appealed within six months from the date the restraint was removed in 1933. The United States Supreme Court would not accept that view, and pointed out in 1931 Indiana appellate jurisdiction apparently was conditioned on a timely filing of the proper papers, and that

the rigid rule may have been relaxed so as to provide discretionary delayed appeals for convicted defendants. The Court further pointed out that there were no indication either that there is any time limitation on the taking of delayed appeals or that such appeals will ever be heard as of right. The Court further held that:

“* * * Under the peculiar circumstances of this case, nothing short of an actual appellate determination of the merits of the conviction—according to the procedure prevailing in ordinary cases—would cure the original denial of equal protection of the law.”

Through no fault of their own, the petitioners were denied the right of appeal from a conviction containing prejudicial and reversal errors.

Your petitioners pray this Honorable Court for their day in court and respondent be ordered to produce said petitioners at time and place set by the Honorable Judge Sam M. Driver.

Petitioners pray further for their liberty to be restored and a writ of habeas corpus will issue and other reliefs entitled to on the premises, for said petitioners, and all cause and detention be shown by respondent.

Respectfully prayed for this day of October 30, 1952.

/s/ WILLIAM GIRON,
Acting Pro Se

Duly Verified.

[Endorsed]: Filed November 7, 1952.

[9]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

On reading the petition of William Giron, Albert Gonzales, and Cecil Coluya for a writ of habeas corpus, directed to John R. Cranor, superintendent of Washington State Penitentiary, at Walla Walla, Washington,

It Is Ordered that John R. Cranor, as superintendent of the Washington State Penitentiary, be and appear before this court, in the court room, in the Federal building, at Walla Walla, Washington, on the 16th day of December, 1952, at 9:00 o'clock a.m., then and there to show cause why a writ of habeas corpus should not issue herein, as prayed for by the above named petitioners.

It is further ordered that John R. Cranor, superintendent of the Washington State Penitentiary, be and he is hereby commanded to have the bodies of the said William Giron, Albert Gonzales, and Cecil Coluya, now detained in his custody, under safe and secure conduct, before the judge of the above entitled court, at the time and place fixed for the hearing.

It is further ordered that a copy of this order be mailed to the petitioners and to the attorney general of the State of Washington, together with a copy of the petition for a writ of habeas corpus, and that a copy of this order and the petition for a writ of habeas corpus be served upon the said John R. Cranor, superintendent of the Washington

State Penitentiary, at Walla Walla, Washington, by mail, on or before the 11th day of December, 1952.

Done by the Court this 7th day of November, 1952.

/s/ SAM M. DRIVER,

United States District Judge [11]

[Endorsed]: Filed November 7, 1952.

[Title of District Court and Cause.]

MOTION TO DISMISS

Comes now respondent, John R. Cranor, superintendent of Washington State Penitentiary at Walla Walla, Washington, through his attorneys, Smith Troy, Attorney General, and Rudolph Naccarato, Assistant Attorney General, and moves the court for an order dismissing the application for a writ of habeas corpus and show cause herein on the grounds and for the reasons that this court does not have jurisdiction, and that the remedy sought by the petitioners is one which cannot be availed of through a writ of habeas corpus.

/s/ SMITH TROY,

Attorney General

/s/ RUDOLPH NACCARATO,

Assistant Attorney General [12]

Affidavit of Service by Mail attached. [13]

[Endorsed]: Filed November 19, 1952.

[Title of District Court and Cause.]

ORDER

On the filing of the petition for writ of habeas corpus in the above proceeding, the court issued a show cause order, directed to the above named respondent, returnable at Walla Walla, Washington, on the 16th day of December, 1952, at 9:30 a.m. At the hearing on that date, R. Max Etter, an attorney of Spokane, Washington, appeared as counsel for the petitioners, and, upon his motion, the matter was continued to January 20, 1953, at 10:00 o'clock a.m. For reasons, which the court deems sufficient, it is advisable to continue the hearing further, and

It is now, therefore, ordered that the hearing on the petition for writ of habeas corpus of the above named petitioners and the return date on the order to show cause are hereby continued to February 5, 1953, at 1:30 p.m., in the court room of this court, at Walla Walla, Washington.

Done by the court this 5th day of January, 1953.

/s/ SAM M. DRIVER,

United States District Judge

[Endorsed]: Filed January 5, 1953. [14]

[Title of District Court and Cause.]

AFFIDAVIT OF WILLIAM GIRON IN
SUPPORT OF PETITION

State of Washington,
County of Walla Walla—ss.

William Giron, being first duly sworn on oath, deposes and says:

That he is one of the petitioners seeking relief by writ of habeas corpus in this court and that he makes this affidavit in support of his said petition to this court.

Your affiant is now confined in the State Penitentiary at Walla Walla, Washington, pursuant to purported judgment and sentence of a Judge of the Superior Court of the State of Washington in and for the County of King entered on the 28th day of April, 1950; that said judgment was and is illegal and void because of the facts and circumstances set out in the affidavit of Albert Gonzales which facts and circumstances are by reference included and referred to here for the benefit of your petitioner, the same as though they were fully set out in support of your petitioner's application; that your petitioner states that the purported judgment and sentence of the State Court was and is illegal and void because of the above and foregoing and further because of facts to be set out herein.

Your affiant states that at about the hour of 9 o'clock [15] or thereabouts on the morning of Jan-

uary 9, 1950, your affiant went to the Police headquarters of the Seattle Police Department in the City of Seattle, Washington, to seek information about the detention of your affiant's wife who had been placed in the King County jail without just reason on the 7th day of January, 1950; that your affiant upon making inquiry in said Seattle police headquarters concerning the reason and cause of the detention of his said wife was immediately seized and placed in a cell and on the following day, your affiant was transferred to the county jail of the County of King where on the 10th day of January, 1950, your affiant was charged with the crime of murder in the first degree; that your affiant upon being arrested was not taken before a magistrate nor was he given any hearing whatsoever, although a magistrate was then available for hearing or appearance; that likewise your affiant's wife had committed no crime and her detention had been effected solely for the purpose of compelling the appearance of your said affiant.

That thereafter your affiant employed an attorney in the City of Seattle to defend him against the charge made against him, to-wit: one W. G. Beardslee, and said affiant employed said attorney to defend him in all stages of the proceedings and in appeals to the appellate court in the event of conviction on said charge; that as consideration for said employment your affiant and his wife deeded certain property to his said counsel, including an apartment house and the family residence; that thereafter trial was had and the only evidence pro-

duced by the State of Washington in connection with the said charge of murder, and the said shooting of one Fidel Molina, was a purported confession of one, Albert Gonzales which was wholly illegal and void and which had been wrung from the said Gonzales by certain policemen of the Seattle Police Department by coercion and bodily assault and during illegal detention of the said Gonzales; that said confession was wholly void and [16] wholly inadmissible because of its involuntary nature and the same was and is wholly untrustworthy and was and is not evidence against your said petitioner; that following said trial your petitioner was found guilty by the verdict of the jury which was based solely so far as your petitioner was concerned, upon the improper admission and use of the purported confession of Albert Gonzales heretofore referred to; that your petitioner and the other petitioners in this cause were tried jointly and not by separate trial and the said confession was used in said joint trial for the purpose of obtaining the conviction of all the defendants, including your affiant who are now the petitioners in this cause; that following said conviction, your affiant requested his attorney and expected his attorney, to perfect appeal to the Supreme Court but that for reasons unknown to affiant no proper appeal was taken or completed although a notice of appeal was made at the time your affiant was sentenced to the State Penitentiary.

That your affiant states that as a result of the sale of the apartment house which had been deeded

to his counsel, the same was thereafter sold and his said counsel received and obtained the balance of approximately \$8500.00 as a fee; that, however, no appeal was perfected or taken on behalf of your affiant and he has had no review by any appellate court of the proceedings had during the trial of your affiant in the Superior Court of King County; that subsequently and on the 11th day of December, 1950, the Supreme Court of the State of Washington dismissed the said appeal and affiant was transferred to the State Penitentiary where he is now confined; that your affiant and all of the said petitioners have sought review of these matters and proceedings in the Supreme Court of the State of Washington and in the Supreme Court of the United States and your affiant and petitioner herein has had no hearing on the matters and things alleged herein and in the affidavits of other petitioners either in the Supreme Court of the State [17] of Washington or the Supreme Court of the United States; that your affiant is now in the penitentiary pursuant to a void and illegal sentence, as above set out, and because your said affiant has been denied right of appellate hearing on examination by any appellate tribunal through no fault of his own, and despite the fact that your affiant was entitled to said hearing and your affiant is therefore held pursuant to a judgment obtained in violation of due process provision of the Fourteenth Amendment to the Constitution of the United States.

/s/ WILLIAM GIRON

Subscribed and sworn to before me this 26th day of January, 1953.

[Seal] /s/ ALLAN MATHES,
Notary Public in and for the State of Washington,
 residing at Walla Walla. [18]

[Endorsed]: Filed February 5, 1953.

[Title of District Court and Cause.]

AFFIDAVIT OF CECIL COLUYA IN
SUPPORT OF PETITION

State of Washington,
County of Walla Walla—ss.

Cecil Coluya, being first duly sworn on oath, deposes and says:

That he is one of the petitioners in this cause and that he was a defendant jointly with the other two petitioners in this cause when the case was tried in the Superior Court of King County; that he is now confined in the State Penitentiary in Walla Walla pursuant to a purported judgment of the Superior Court of King County entered on the 28th day of April, 1950, wherein your affiant along with the other two petitioners in this cause, was sentenced to life imprisonment for the alleged and purported crime of murder in the first degree; that said judgment and sentence of the Superior Court of the State of Washington, in and for the County of King, was and is a nullity and is illegal and

void because of the following: your affiant states that on the 8th day of January, 1950, he was arrested at his home without any warrant of any kind and placed in the city jail of the City of Seattle, Washington, and held without any charge whatsoever until Tuesday, the 10th day of January, 1950, when he was transferred to the King County jail where he was then charged with the purported crime of murder in the first degree; [19] that following the arrest of your affiant he was not only held without charge but he was not taken before any magistrate for the purpose of advising him of any charge and he was not advised of any of his rights concerning his right to counsel or otherwise.

Your affiant states that he was without funds to employ an attorney of his own selection and that therefore the court appointed counsel for him for the trial which terminated with a jury verdict of guilty against your affiant and other petitioners on the 10th day of April, 1950; that the only evidence of any substantial character or nature and the only evidence upon which any conviction of your affiant could be based, was a purported confession of one Albert Gonzales which had been obtained from the said Albert Gonzales by coercion, abuse and physical assault on said Gonzales by the Seattle Police Department and the only other testimony of any substance or character against your said affiant was testimony which your affiant states was of a perjured character; that after the conviction of your said affiant he made repeated requests for permission and for the right to appeal his said cause in

the form of forma pauperus but your said affiant was unable to secure counsel for said purpose and there was nothing done by the said court to afford any further remedy to your said affiant; that your affiant was tried jointly with the other petitioners and was convicted by reason of the use by the state of statements, given under coercion and duress, of Albert Gonzales and your affiant was not afforded the protection of due process guaranteed by the Fourteenth Amendment to the Federal Constitution and your affiant further states that no review has ever been given by any federal court of original jurisdiction to the facts and circumstances alleged herein; that your affiant is restrained of his liberty solely as the result of his conviction based upon the use by the State at the trial of your affiant of an illegal and void statement [20] and confession of one, Albert Gonzales.

/s/ CECIL COLUYA

Subscribed and sworn to before me this 26th day of January, 1953.

[Seal] /s/ ALLAN MATHES,
Notary Public in and for the State of Washington,
residing at Walla Walla. [21]

[Endorsed]: Filed February 5, 1953.

[Title of District Court and Cause.]

AFFIDAVIT OF ALBERT GONZALES IN
SUPPORT OF PETITION

State of Washington,
County of Walla Walla—ss.

Albert Gonzales, being first duly sworn upon his oath, deposes and says:

That he is one of the petitioners who has made application for writ of habeas corpus in the above entitled court, the other two petitioners being William Giron and Cecil Coluya; that all of your said petitioners are confined in the State Penitentiary in Walla Walla, Washington, pursuant to a purported judgment and sentence entered by the Superior Court of the County of King, State of Washington, following trial of your affiant and other petitioners on a charge of first degree murder upon which a verdict of guilty was returned by the jury.

Your affiant states that the sentence of the court was void and illegal and that the confinement of your affiant is now illegal because of the following facts occurring prior to and at the time of trial, which deprived petitioner of his rights guaranteed by the Constitution of the United States of America; that at about the hour of 1:30 a.m. on Saturday, January 7, 1950, your affiant was arrested in a taxicab on Renton Avenue near Myrtle Street in Seattle, Washington, by certain police officers of the [22] City of Seattle; that at the time of the arrest of your affiant, he was not advised by any of the

police officers with regard to the reason for his arrest, nor did any of the said police officers display, show or read to your affiant a warrant for his arrest, nor did any of said officers advise your affiant that there was any warrant in their possession or the possession of others calling for the arrest of your affiant, and he was told that he was being taken to the police headquarters of the Seattle Police for questioning concerning some minor affair or affairs.

Thereupon your affiant was taken to police headquarters of the Police Department of the City of Seattle and upon arrival at said headquarters was taken to the office of one police officer, Austin Seth, where he was questioned for a lengthy period of time by police officers Thomas and Ryan of the Police Department of the City of Seattle with regard to the movements and whereabouts of your affiant during the several hours preceding his arrest; that your affiant was then placed in a jail cell which was locked and he was not advised as to any reason for his detention; that some 30 minutes after your affiant had been detained and locked up following the questioning heretofore set out, he was again removed from his cell and taken into a room in police headquarters and he was again questioned, threatened and abused by said police officers of the Seattle Police Department, who insisted that your affiant admit that he, your affiant, had shot one Fidel Molina during the early part of Saturday morning, January 7, 1950; that during this time your affiant was abused and threatened to such an

extent that he feared for the safety of his person and because of such fear he signed a written statement for the Seattle Police Department at about 5:00 a.m. on the morning of January 7, 1950; that your affiant in said statement told said police officers about some of his movements but because of the fear that your affiant had arising out of the threats, abuse and coercion of said police officers he told them merely a few things that would indicate his whole knowledge [23] of those things which said officers demanded to know but your affiant in no wise admitted any complicity in the shooting of the said Fidel Molina whatsoever; that following the signing of said statement at the time of 5:00 a.m. on January 7, 1950, your affiant was continually questioned, abused and threatened by certain police officers and your affiant was assaulted by several police officers and in particular by one officer, Thomas, and your affiant was continually questioned throughout the day of Saturday, January 7, 1950, and into the late evening of January 7, 1950, and until after the hour of 2:00 a.m. on January 8, 1950; that during said questioning your affiant was continually subjected to the abuse and threats of the police officers and was not allowed to secure rest or comfort from said questioning whatsoever; that during all of the said time there was available a judge or magistrate before which your affiant could and should have been taken for the purpose of advising your affiant as to all of his rights, including your affiant's right to have counsel, and your affiant's right not to testify against

himself or to be subject to threats, coercion, duress and bodily assault; that at said time, to-wit: approximately 2:00 a.m. on the morning of the 8th day of January, 1950, your affiant signed a statement implicating your affiant and the two other petitioners herein, William Giron and Cecil Coluya, and your affiant signed such statement wholly and solely because of the fear of your affiant for the safety of his person and life arising from the threats, abuse and assault of the police officers of the City of Seattle; that both of said statements and confessions were obtained by said police officers before your affiant had ever been charged with any crime or arrested by warrant or arraigned before any magistrate or any court of competent jurisdiction: that after your affiant had signed the aforesaid statements and the confession of January 8, 1950, police officers Seth and Sprinkle brought your affiant from the jail into the office of the Police Building where [24] they compelled, by devious means, the affiant to admit certain parts of the said statement by question, answer and oral reading, and these statements were taken down on a wire recorder hidden in said room and without the knowledge or voluntary consent of said affiant who was in fear at all times of his very being and life.

That thereafter and on Tuesday, January 10th, your affiant was transferred to the county jail and was first charged with any crime, to-wit: the purported charge of murder in the first degree.

Your affiant states that during the trial of your affiant and petitioners herein, which terminated

with the finding of the jury of guilty on April 10, 1950, the prosecuting officials over the repeated objections of the attorneys for your affiant and petitioners, were permitted to read to the jury and to introduce in evidence the said purported confession of affiant which was in fact no confession at all, but which was an involuntary coerced statement of no value whatsoever, and that had it not been for said statement, the said prosecuting authorities would not have had evidence of a sufficiency or any evidence whatsoever to warrant and justify the conviction of your said affiant and petitioners herein.

Your affiant is a Filipino and had never been in trouble before and was not acquainted with any of the methods of the law enforcement officers and was not acquainted with his rights in said matter and your affiant following said trial relied upon counsel to perfect an appeal to the Supreme Court and which counsel had represented to affiant that such appeal would be perfected but your affiant was unable to pay additional attorney fees and the costs of such appeal and therefore, because of the lack of funds, and the refusal of said attorneys to provide further an appeal even in forma pauperis form your petitioner was foreclosed from any further proceedings or examination by an appellate tribunal. [25]

Your affiant states that all of the said confession was obtained in the manner aforesaid and your affiant states that the fact has never been denied that your affiant was not given any hearing before a city magistrate or arraigned or advised of his rights

at any time prior to the charge of murder being lodged against him, and your affiant states that said statements were worthless, valueless and untrustworthy and were coerced from your affiant in the manner set forth in this affidavit.

/s/ ALBERT A. GONZALES,

Subscribed and sworn to before me this 26th day of January, 1953.

[Seal] /s/ ALLAN MATHES,
Notary Public in and for the State of Washington,
residing at Walla Walla. [26]

[Endorsed]: Filed February 5, 1953.

[Title of District Court and Cause.]

RECORD OF PROCEEDINGS

Be it remembered that the above entitled cause came on before the Honorable Sam M. Driver, Judge of the said Court, on February 5, 1953, and July 14, 1953, at Walla Walla, Washington, the petitioner Gonzales being personally present at each of the said hearings, and on December 17, 1953, at Yakima, Washington, and being represented by R. Max Etter, his attorney, on each occasion; the respondent being represented by Cyrus A. Dimmick, Assistant Attorney General of the State of Washington; and the following proceedings were had, to wit: [29]

The Court: All right, you may proceed if you

are ready, gentlemen. Oh, let's see, these affidavits are new to me here.

Mr. Etter: Yes. You will recall, your Honor, that when your Honor set this over until the 20th and then until the 5th, I pointed out to your Honor that in a petition which had been drawn pro se by the petitioners, they had made a statement about coercion and I asked your Honor if you felt it was necessary that I redraw the petition and specify all of the acts, and you advised me that that wouldn't be required; that if there was evidence of such, it could be adduced in open court by testimony or in the form of affidavits, and those are the affidavits which have been drawn and filed in this case and I have particular reference to the affidavit on file of Albert Gonzales, your Honor, and the testimony would adduce very little more than that which is set up in the affidavit, except that, with the Court's permission, I should like to put into evidence two exhibits which are referred to in the affidavit of Albert Gonzales, and those two exhibits are the alleged statements or admissions or confessions that are involved and they are under attack in the affidavit in this proceeding.

With the Court's permission, I will call Mr. [30] Gonzales for that limited purpose and possibly for some other reason, if the Court deems it desirable after having examined the affidavit.

The Court: There are practical difficulties that are presented in these cases, particularly where the defendants are without counsel. I know of no method of subpoenaing witnesses in here at govern-

ment expense. I am constantly faced with requests on the part of these petitioners to subpoena some witness and, if he hasn't the funds to pay the witness fees, I know of no way that I can do it. The Administrative Office will not approve it, and if I subpoenaed them in here, there would be hard feelings because they wouldn't get any witness fees and they would expect the government to pay it, I presume. But the statute—I haven't the section in mind at the moment, but you gentlemen probably know the one I refer to—provides that in these hearings affidavits may be used, that is, the Court may authorize the use of affidavits, but it provides that if affidavits are used, the opposing party shall be given an opportunity, I believe, to submit interrogatories to the affiant. Now there is no specification as to how that should be done or the mechanics of it, but I think the spirit of it is that if the opposite party desires to do so, they should have an opportunity to submit counter-affidavits or to submit interrogatories or take the deposition of the affiant. [31]

In this case, of course, the petitioners are here and counsel would have the privilege of cross examining them if he cares to do so.

Mr. Etter: That is correct.

The Court: This is a civil action; there isn't any question of compelling them to give evidence against themselves.

Mr. Etter: That is correct.

The Court: Have you seen these affidavits, Mr. Dimmick?

Mr. Dimmick: Yes, your Honor. I think I have noted the acceptance on the original application.

The Court: Well, I suppose, unless you can tell me the substance of them here——

Mr. Etter: I can do that, your Honor.

Mr. Dimmick: I think I sent those back to Mr. Etter on February 3rd.

Mr. Etter: That is correct, and they were filed.

The Court: Well, they probably were in the file here, but I have been so preoccupied with other matters I didn't get an opportunity to read them, so that if you can tell me their contents, it might save my time in reading them.

Mr. Etter: I can state it briefly, possibly give you an outline of what occurred in the case, your Honor, not by way of argument, so your Honor can follow the affidavits. [32]

The Court: Yes.

Mr. Etter: The criminal action which was brought against the three defendants who are seated over here, that is, Mr. Giron, Mr. Coluya and Mr. Gonzales, was filed against them, a criminal information, charging murder. The facts seemed to indicate that another Philippino by the name of Molina had been shot in the City of Seattle on the evening of January 6th or the early morning of January 7th of 1950. As a result of it, to get right down to cases, these three people, these three defendants, were arrested in varying stages of the investigation and were charged with the murder, tried and found guilty by the verdict of the jury.

An appeal was attempted to be taken by notice

of appeal. It was fruitless, however, and it was not prosecuted further on behalf of any one of the defendants.

The controversy here arises from the use of a confession. It appears from the affidavit of Albert Gonzales that what occurred, your Honor, was generally this:

After the ordinary statement of his confinement in the penitentiary by virtue of what we call illegal process—and this is all set out in the affidavit of Gonzales—on the evening of January 7th at about the hour—or, rather, in the morning of January 7th, that is, about 1:30 a.m., Gonzales, one of the petitioners, was arrested, seized and arrested in Seattle about 1:30, and at the time of his [33] arrest by the police officers, he was not advised that there was any warrant for his arrest, nor did the police officers have any warrant to serve upon him.

The affidavit further alleges that there was no statement made to him as to the purpose of the arrest. He was told he was being taken into the police headquarters of the City of Seattle Police Department, which was then located, as your Honor probably knows, in that old building down on Yesler Way, which has since been replaced by the new building. He was taken there for questioning.

When he was taken into the headquarters, he was taken to the offices of the police by an Austin Seth, where he was questioned for some time by two police officers whom he names, one Thomas and one Ryan, who were detectives of the Police Department of the City of Seattle. They questioned

him with regard to his movements and his whereabouts on the evening preceding the alleged shooting and murder of this fellow Molinda, who was supposedly some pumpkins in the Philippino colony over there and who operated some kind of a gambling establishment down below the line.

After he had been taken in and detained, he was questioned and after his questioning he was put in a cell and then brought out again and was continually questioned. The affidavit indicates that what actually happened was that during the course of the questioning, one of the Seattle [34] police officers, or two of them at least whom he names, Thomas and one other one, threatened him with physical violence and, in fact, did inflict physical violence on him.

The evidence will show that this one police officer, according to the evidence, assaulted him physically and beat him on one occasion. This is not in the affidavit; it is further elucidation of the assault that happened; but there were threats and coercion and physical assaults upon his body and person during the questioning.

I might say this, your Honor, that the questioning started at approximately 1:30 a.m. on the 7th and continued all of that morning, it continued all Saturday morning, that is, the hours from 1:30 down to 6:00, from 6:00 on up to noon, and it continued all the way around. At about 5:00 o'clock on Saturday morning, about three and a half hours after the arrest, there was a statement written by one of the police officers to which Mr. Gonzales put

his signature and which we will introduce in evidence, a photostat which we have received, in which there is some reference made to his movements, but a denial of any participation or knowledge of the particular acts. In other words, there is nothing in this first one that would prove at all that this man was a participant. But the purpose, according to the affidavit, of giving this was to get these people to lay off.

But, anyway, after he gave this statement, the [35] questioning continued. That was after five o'clock. I might point out to your Honor that it is marked on here at 5:00 a.m., January 7, 1950; that thereafter and from approximately five o'clock all through that morning and all through that afternoon and all into the night and into Sunday morning at about 2:10; in other words, a total of approximately 26 hours of solid questioning in relays by these policemen over there, Mr. Gonzales, who had never been in a jail before, had never seen a police station before, knew nothing about his rights, with about a ninth grade education, finally gave this statement upon the further threat that he was going to get just what they had given him before if he didn't come through and tell them something.

So this last statement then was written out by one of the officers at about 2:10 a.m. on Sunday morning following the arrest.

The Court: He was arrested Friday, you say?

Mr. Etter: He was arrested Friday. Well, I should say early Saturday morning, 1:00 o'clock Saturday morning.

The Court: Yes.

Mr. Etter: So he was subjected to continual questioning and the physical assaults of two of these officers until 2:10 a.m., Sunday morning, the time that is marked on this statement, when he finally made a lot of these statements implicating himself, implicating Coluya and implicating [36] Giron, supposedly, in movements that led up to this shooting out in Renton, the southerly part of the City of Seattle, of this fellow Molina.

In these statements, he makes one statement: "I knew Molina was after me and I had to get him first." And it is indicated further in the statement that some years ago Gonzales' brother was shot and killed in the City of Seattle and the suspect was Molina, who apparently was top man in the gambling and all the rest of it over there, and therefore the motive set out in this, which is not in his handwriting at all, was that this fellow over here, Gonzales, was going to have to get this other fellow before he got him, and there is a lot of that stuff, anyway.

But following this confession which was rung out of him at 2:10, in other words, about 26 hours after he was detained, he was still detained over Sunday and over Monday. Then on Tuesday, in other words, Saturday, Sunday, Monday, Tuesday, some four days or so later, he was taken out of confinement and moved over to the County-City Building where he was first given any hearing at all or knew what it was at all he was charged with. He was charged then with first degree murder.

In the meantime, Giron had come to his home on Saturday morning, been out and come back to his home on Saturday morning. He had a little boarding house over there. [37] His affidavit indicates he got home and his wife wasn't there, so he asked one of the tenants where his wife was and they said that the Police Department had come up to his house and picked up his wife and had her down to the police station. So he promptly got himself an attorney and asked the attorney what he should do, and the attorney, along with this man Giron, went down to the police station, where Giron was promptly apprehended by the police and thrown into a cell and his wife was then released, the idea being they wanted to hold the wife until he showed up.

During that time, on Monday or Tuesday, this man Coluya, who is also implicated in this same confession, or these two confessions, one of which is of very little evidentiary value as far as the Police Department of Seattle is concerned in finding out who murdered this Molina, and this other which implicated all of them, was picked up. They were all picked up then and charged on Tuesday or Wednesday of the following week with the murder.

They were then tried jointly, all three were tried jointly, and the affidavits set out that, other than the admissions and the evidence that is contained in the confession, there was nothing of any evidentiary or substantial value upon which any of these people could have been convicted of any crime;

that this was the confession that was used and employed, and that during the—— [38]

The Court: That was used in the trial, you mean?

Mr. Etter: This was used in the trial. These are two exhibits that were admitted, particularly this last one.

The affidavits further indicate that after the confession was secured, Gonzales was brought into another room where certain parts of this matter were read to him and he was required to answer in accordance with this. That was being taken on a wire recorder, taken directly from this after this had been secured. We haven't been able to secure any of that particular testimony, but it is in line and in conjunction with the particular matter which appears in here.

Now that, in brief outline, are the allegations that are set out in here. Of course, it is amplified in considerable extent in the affidavit as to the different officers that questioned him in relays and the different acts they performed. And I think it being a visual matter of your examination here, having made that statement, that I should put Mr. Gonzales on the stand and question him a little bit further with regard to that, and also for the purpose of admission of these exhibits for your Honor's consideration and Mr. Dimmick's.

Mr. Gonzales, will you take the stand, please?

The Court: Mr. Gonzales was the only defendant in the state case who signed a confession?

Mr. Etter: That is correct. [39]

The Court: I should think that the jury would have been instructed to limit the effect of Gonzales' confession to him alone, and not as to the other defendants. Wouldn't that have been a proper instruction?

Mr. Etter: No, I don't think it would have been a proper instruction, your Honor, because I think the Court makes it pretty clear in *Ashcraft vs. Tennessee*, where they tried two men jointly, a Colored youngster named Ware and a man named Ashcraft, where Ashcraft was charged with procuring Ware to kill his wife and Ware had told them under some confession of this, the Court indicates that the use of a confession of that type is no good as against anybody when used in a joint prosecution.

The Court: What I meant to say here, ordinarily, unless by other evidence the prosecution is able to show conspiracy, whether it is charged or not, if they can show conspiracy and by independent evidence that the three defendants were members of this conspiracy, then I suppose the confession of one might be used against the others. No, it wouldn't be unless it was in furtherance of it.

Mr. Etter: In furtherance of it.

The Court: What I was thinking, if one man confesses, his confession shouldn't be used as evidence against somebody who didn't—

Mr. Etter: Absolutely correct, that's right. [40]

The Court: What was the situation in the state court trial?

Mr. Etter: I don't know what that instruction

was, your Honor. I haven't had an opportunity to examine the file. In fact, we have been unable to do that. That is my feeling of the law, that it certainly wouldn't be admissible. [41]

ALBERT GONZALES

called and sworn as a witness on his own behalf, was examined and testified as follows:

Direct Examination

Q. (By Mr. Etter): I want you to speak out as loudly as you can because Mr. Dimmick and everybody in the court has to hear and the reporter and the acoustics aren't very good.

You state your name, please.

A. Albert Gonzales.

Q. And you are now confined in the Washington State Penitentiary pursuant to an order and verdict—or verdict and commitment and order of the Superior Court of King County?

A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. And you are one of the petitioners in the case involving William Giron, Albert Gonzales and Cecil Coluya, who petitioned this Court for writ of habeas corpus, is that correct? You are the three petitioners? A. Yes, sir.

Q. How old a man are you?

A. I am 45 now, sir.

Q. You are 45? A. Yes, sir. [42]

Q. Have you a family? A. No, sir.

Q. You have no family. And what education

(Testimony of Albert Gonzales.)

have you ever had? A. Eighth grade, sir.

Q. What kind of work have you ever done?

A. Well, I worked for my company, sir.

Q. What kind of work?

A. Mess attendant.

Q. Mess attendant. And any other type of work?

A. Yes, sir, I work in the Army Transport.

Q. In the Army Transport?

A. Yes, sir. Then I worked at Navy Pier, around there in Pier 91, Seattle. Then I go to Alaska every season, sir.

Q. Every season you worked in the cannery, isn't that right, in Alaska? A. Yes, sir.

Q. And when did you come over to the United States from the Philippine Islands?

A. 1929, sir.

Q. 1929. You have been here since that time?

A. Yes, sir.

Q. And you state in your affidavit that you were arrested at about 1:30 on the morning of the 7th. That would be Saturday morning, the 7th of January, 1950? A. Yes, sir. [43]

Q. Is that correct, by certain police officers of the City of Seattle? A. Yes, sir.

Q. And that you were taken then to the Police Headquarters of the City of Seattle?

A. Yes, sir.

Q. When you were arrested, was there any warrant served on you? A. Sir?

Q. Was there any warrant served on you when you were arrested? A. No, sir, no.

(Testimony of Albert Gonzales.)

Q. Were you told the purpose of your arrest?

A. They just told me they have to take me to the police station, sir.

Q. The police station? A. Yes, sir.

Q. Did you ever have a warrant of arrest served on you when you were in the police station?

A. No, sir.

Q. Beg your pardon? A. No, sir.

Q. You didn't. Now after you were taken to the police station, will you tell the Judge what happened?

A. While I was in the police station, the two policemen, they took me upstairs—— [44]

Q. Who were the two policemen?

A. Well, I don't know their names, sir.

Q. They were the first officers that arrested you?

A. Yes, the first officers from the car, from the squad car.

Q. They took you upstairs?

A. They took me upstairs and then they took my name and then they register, I guess. Then after that, they took me in the second floor again and then they hand me over to a couple of detectives down there, so the couple of detectives, they just said, "This is the guy."

Q. Who were the detectives?

A. I not speak——

Q. Tell us who they were.

A. I don't know their names, sir. But, anyway, they manacled me down there, they shoved me down in the chair.

(Testimony of Albert Gonzales.)

Q. All right, then what happened?

A. Then after that, the Sergeant asked me a question, he said, "Are you going to tell us something?" I said, "I don't know, sir." So he said—he started—said, "You have to tell us something if you know what is good for you," he said.

Q. All right—

A. So I got kind of scared. Then he said, "What did you do with Molina?" I said, "I don't know, sir." So I said—I requested my lawyer, if I could call my lawyer. [45] He said, "You're not going to call anybody until you're going to make a statement," he said.

Q. Who said that, now?

A. The Sergeant, sir.

Q. Who was that, Thomas?

A. Sergeant Ryan.

Q. Ryan? A. Yes, sir.

Q. Sergeant Ryan, and he said you weren't going to get a lawyer until you told them something, is that it? A. Yes, sir.

Q. All right?

A. And then after that, the couple of detectives came again, he said, "Well, if you don't want to talk, we take him upstairs and then we will make him talk," he said.

Q. All right?

A. So then Sergeant Ryan, he said, "He'll talk." So after that Sergeant Ryan asked me again if I would make a statement, and I said, "I don't know, sir. I don't know anything about it, sir. I

(Testimony of Albert Gonzales.)

wish I could call up my lawyer." "I told you before that you're not going to see anybody and call up anybody until you make a statement." So I requested my consul, so he get mad, "All right," he said, "I tell you the last time," he said, "you're not going to call up anybody until you're going to make a [46] statement."

Q. Did he do anything to you physically then?

A. No, but he stand up and he get mad.

Q. All right?

A. So then about a few minutes later, there was a big detective just came in and said, "This is the guy," he said. So he just came down there and grabbed me, and I was about six or five feet from the window there and he just pushed me all the way down there, hit the radiator down there, I banged my head down there on that window.

Q. Just a minute. He threw you, you say, where?

A. Yes, threw—pushed me all the way through the window there.

Q. A window?

A. Yes, sir, hit the radiator down there, just like a register like.

Q. A radiator? A. A radiator.

Q. All right?

A. So then, "You're not going to tell us something?" "Well, I don't know, sir," I said. So he said, "You have to tell us something if you know what is good for you," he said. So I didn't even have a chance to answer, so he just beat me like this, your Honor (indicating).

(Testimony of Albert Gonzales.)

Q. Just a minute. You say he beat you. Where did he beat [47] you? Just tell us where he beat you.

A. He beat me down here and way up on the belly, my stomach up here (indicating). It hurt awful.

Q. How long did he hit you? Tell the Judge.

A. He just hit me right below the belt, right here (indicating).

Q. All right?

A. It hurt awful. So I said, "Sir, please don't hit me any more." So I have to call up twice, I have to ask him twice not to hit me any more. So then he said—and then he hit me the fourth or fifth time and it hurt me awful so I have to bend down there. So getting—he raised me up, he swear down there at me down there, and he said—do I have to repeat what he said, sir?

The Court: Yes, you should repeat it.

A. He said, "God damn it," he said, "punch you in the sidewalk. I'm going to kick your God damn face," he said.

Mr. Etter: Q. All right, then, did you give him this statement?

A. Then after that, he went out, the detective went out, and Sergeant Ryan he came down there, he come and sit down. "You better give us now." I still tried to refuse, but then he get mad, so I said—he pick up a paper, he said, "Well, who was your companion?" this and that. So he asked

(Testimony of Albert Gonzales.)

me who is my companion, so, of course, I didn't [48] give them their right name.

Q. Did you give them a statement about five o'clock? A. I don't recall the time, sir.

Q. It was toward the latter part of the morning?

A. Yes, sir.

Q. All right.

The Clerk: Petitioners' 1 for identification.

Mr. Etter: Q. Handing you what is the Petitioners' 1 for identification, this is a photostat. Without telling any of the material that is here, will you look at it and tell me what it is. Don't go into any details of what it comprises, the matter in it, though. A. Read, you say?

Q. Don't read it, just tell me what that is.

A. Well, this is the statement, I guess, sir, yes.

Q. Is that your signature?

A. Yes, sir, that is my signature.

Q. And on this page (indicating)?

A. Yes, sir.

Q. And on that page?

A. Yes, sir. Yes, that is my signature, sir.

Q. And the time marked up here at 5 a.m. on January 7th, would you say that is about right?

A. I think so, sir. Of course, I didn't remember much of the time now. [49]

Q. Did you write this out?

A. I recall I wrote—the only thing I wrote, sir, is just my name, because he wrote it.

Q. You made statements, though?

(Testimony of Albert Gonzales.)

A. Yes, because he asked me questions, this and that.

Q. I see. Now after you made this statement around five o'clock or thereafter, if we take the time on the exhibit, what then happened? What occurred then?

A. Well, he said, "So you are the brother of that Max," he said, "that this fellow killed." He said he shoot my brother without any cause at all, he said. So I reminded the previous record of Molina, about shooting my cousin about 1936 and mentioned about the shooting of the policeman and then he shoot another fellow, he killed four fellow already. So he said, "I don't want to hear anything of those things," he said. He said he don't want to hear of those records.

Q. Then what did they do with you?

A. Well, a couple of detectives came over there, said, "Come on, let's go," they said. They took me outside, sir. They took me in the house of Giron. I thought at first they were going to take me out somewhere and beat me up because I was so scared I didn't realize, because when I was in the car one of the detectives pointed a gun at my head, sir, I was so scared. He said, "If you try to [50] run away, I'm going to shoot you," he said. "How can I run away? I have my hands down behind my back." He just said, "Keep still." He just pointed the gun. I was so scared I couldn't look at that because he might liable—

Q. Did you point out Giron's house?

(Testimony of Albert Gonzales.)

A. Sir?

Q. Did you point out Giron's place?

A. Yes, he took me over there, sir.

Q. And Coluya's, too? A. No, no, sir.

Q. Not Coluya's. All right, when did they take you back to the police station, do you remember?

A. I think they took me back about ten minutes later, sir.

Q. All right. Did you stay then in the police station?

A. No—well, they questioned me for awhile down there, sir, but I cannot say any more, sir, because I am too tired, my stomach is painful.

Q. All right. What did they do then?

A. Well, they said, "You go downstairs," he said. So they took me down in my cell.

Q. In your cell?

A. While I was in my cell, I started—I stay only about five or ten minutes, they took me up.

Q. How long did this keep up?

A. Oh, I couldn't recall, sir, because they kept on coming [51] and picking me up every five or ten minutes.

Q. They were coming and bringing you out every five or ten minutes? A. Yes, sir.

Q. Did you have any trouble—

A. Yes, sir.

Q. —with your urination after this beating?

A. I cannot urinate—there is a girl; I have to—?

The Court: Just speak right out, that's right.

(Testimony of Albert Gonzales.)

A. I cannot urinate.

Mr. Etter: Q. You couldn't. Are you able to yet?

A. No, still bothers me, sir.

Q. I see. And it is over here?

A. Yes, sir. That is why I stay alone in my cell, in my own cell.

Q. You have a cell to yourself? A. Yes, sir.

Q. Did you ever have this before this beating?

A. No, sir.

Q. Had you ever been in a police station before in your life? A. Not yet, sir.

Q. Had you ever had anything to do with policemen before? A. No, sir, no.

Q. Had you ever been under arrest before in your life? A. No, sir. [52]

Q. First time you had ever been in trouble in your life? A. No, sir.

Q. Well, about two o'clock—did you say this in a general way went on all day Saturday?

A. Every ten or fifteen minutes they just keep on coming back to me. I was so tired I couldn't even move. My mind is so empty.

Q. All right, now, at two o'clock, or about two o'clock, did you make another statement?

A. Yes, sir, when Sergeant Seth—

Q. Austin Seth? A. Sergeant Austin Seth.

Q. Was there another policeman there?

A. Sprinkle.

Q. Officer Sprinkle? A. Yes, sir.

Q. Tell me—

The Court: What are those two names?

(Testimony of Albert Gonzales.)

Mr. Etter: Austin Seth and Sprinkle,
S-p-r-i-n-k-l-e.

The Court: Those were the two officers?

A. Yes.

Mr. Etter: Two Seattle police officers, yes.

Q. Just prior to the time that you made this statement, Mr. Gonzales, will you tell whether or not there was any conversation or threats just before this statement was given? [53]

A. Yes, sir. While I was—when I was talking with Sergeant Seth down there in this office, why he mentioned to me that he knows my brother because he was over there about three or four weeks before he was killed.

Q. He knew your brother?

A. Yes, sir. So he was showing me a picture of a Philippino who was riddled with bullets, sir. He told me he suspected Molina that took this fellow for a ride, but there is no way to pin it on him. So I told Mr. Seth that, "Sir, if you suspect Molina, why didn't you take him in?" He say, "We don't have any evidence," but he suspects that he was the one, he said. That was around November, sir, they pick up a Philippino in the Tacoma highway there. He was riddled with bullets.

Q. All right?

A. Well, we Philipinos know the record of Molina, because personally I don't know Molina, sir, I just know his previous record, because everybody is afraid of him because he is a big man, he always talk with his gun.

(Testimony of Albert Gonzales.)

Q. What happened, though, what happened just before the conversation?

A. Well, Mr. Seth asked me if I could make a statement. I said, "I cannot make any more because I am so sick." I said, "I would like to go to my cell." So he said, "Well, this other statement is not satisfactory," he said, "the [54] other is not satisfactory." He said, "I will let Mr. Sprinkle help you," he said. So he let Mr. Sprinkle down there. He sat down, he told me to sit down, so Mr. Seth went out. So I asked Mr. Sprinkle if I could call up my lawyer, I said. He said, "I'm going to let you have your lawyer if you can give us another statement," he said. "Well, I made one already, sir. I can't make any more because I am too sick," I said. "Well," he said, "if you are not going to make one, I'm going to turn you over down there, you're going to get the same beating."

Q. He said what?

A. "You're going to get the same beating," he said. So he asked me, because I figured they was going to give me another one. "I don't know what happens," I said.

The Court: I'm not sure that I understood entirely what he said there.

(The answer was read.)

Mr. Etter: Q. All right, then, was the statement written out?

A. No, then Mr. Sprinkle took a paper and he said, "I will help you." He asked me a question, he said, "Do you know this fellow?" he said. He

(Testimony of Albert Gonzales.)

mentioned Molina—I mean Giron and Coluya. I said, “No, sir.” “Well,” he said, “you might as well tell us because I know everything already.” I said, “Well, I don’t know, sir, I made the [55] statement already, I can’t make any more.” So he stand up, “Are you going to make one or not?” he said. “Well, I don’t know what to say, sir. There is nothing much more to say.” He said, “Well, just sit down there and I will help you,” he said. Kept on writing down there and——

Q. So about 2:10 on Sunday morning he wrote this statement out?

A. I think so, sir. I don’t recall those times any more.

The Clerk: Petitioners’ Exhibit 2.

Mr. Etter: Q. Handing you the Petitioners’ Exhibit 2 for identification, being a photostat, don’t read any part of this, but just look at it, if you will, and tell me what it is, if that is the statement that you signed at approximately 2:10 a.m. on Sunday morning, the 8th of January?

A. Yes. Well, he wrote that, sir, but I signed it.

Q. He wrote it? A. Yes, sir.

Q. You signed it? A. I signed it.

Q. Those are your signatures?

A. I refused to sign it at first, but he said I have to sign, but I didn’t do that after he let me see it. Then he went out and they have a conversation with Mr. Seth and the rest of the detectives outside. So when he came [56] back, he say, “I

(Testimony of Albert Gonzales.)

want you to read that aloud," he said. That is what he told me.

Q. Why were you reading it aloud?

A. I have to, sir, because he told me to read it. I have to obey him.

Q. Then they told you they had a wire recorder?

A. No, sir, no, sir.

Q. Not at that time? A. No, sir.

The Court: Did he sign this one?

Mr. Etter: Yes, they told him to sign this one and read it.

Q. It was after you signed it, you read it aloud, you say they brought the other detectives in?

A. No, sir, no, they took me up to see them. Then Mr. Sprinkle let me read that aloud.

Q. I see.

A. He had me read it very loud, sir.

Mr. Etter: Move at this time for the admission of Petitioners' Exhibit 1 for identification into evidence, your Honor.

The Court: It will be admitted.

(Whereupon, the document above referred to was admitted in evidence as Petitioners' Exhibit No. 1.) [57]

Mr. Etter: Q. Had you asked for a lawyer before you signed that one, too?

A. Yes, sir, both of them.

Q. And were you in this Seattle Police Headquarters during Saturday morning?

A. Sir?

(Testimony of Albert Gonzales.)

Q. You were there all Saturday morning, were you not? A. Yes, sir.

Q. At any time after your arrest, did any policeman take you up in front of the judge like that judge here and ask you what your name was?

A. No, sir.

Q. And tell you you were charged with any crime? A. No, sir.

Q. Or advise that you had a right to counsel?

A. No.

Q. Or advise about your rights with regard to making any statement that would incriminate you or anything like that? A. No, sir.

Q. Or was a bond set on you in any of that time? A. No, sir.

Q. You were just kept there, is that it?

A. Yes, sir.

Q. Were you kept there all day Sunday, the following day? [58] A. Yes, sir.

Q. After this was signed? A. Yes, sir.

Q. And Monday of the following day?

A. Yes, sir.

Q. Were you allowed to see a lawyer on Sunday or Monday?

A. Well, they left me up there. After a couple of hours up there, I signed the second one, Mr. Seth let me call up my friend. He wouldn't let me call up a lawyer.

Q. He let you call a friend?

A. Yes, sir.

(Testimony of Albert Gonzales.)

Q. But you didn't see a lawyer or anybody on Monday or Sunday?

A. Well, I let my friend get in touch with the lawyer there.

Q. That was when? Monday?

A. I don't recall any more what day because my mind is so empty that time.

Q. When did they take you over to the County-City Building where they have the county jail?

A. I think that was about Tuesday in the morning, sir.

Q. Tuesday? A. Yes, sir.

Q. Was that the day they filed an information against you and charged you with murder?

A. Yes, sir, yes. [59]

Q. And were you taken up before a judge that day?

A. Yes, sir. I think so, sir. I don't recall—at any rate, I know that they took us over there.

Q. And you had never seen a judge until that time? A. No, I don't recall, sir.

Q. Or a lawyer?

A. Well, I have seen a lawyer. He came down there, I think that was—I don't recall, I think that was around Monday morning, sir.

Q. Monday morning. But during Saturday and before the statement was signed——

A. No, they wouldn't let me, sir.

Q. Never saw anybody? A. No, sir.

Q. And were you afraid of these policemen?

A. Well, I was afraid of them, sir, because that

(Testimony of Albert Gonzales.)

is why I intended to be peaceful, because I never——

Q. You were in fear of bodily harm?

A. Yes, sir. I always afraid of them, sir.

Q. And is that why you gave these statements?

A. Well, if I don't give it to them, sir, they are going to beat me.

Q. I know, but that is why you gave it, is that it?

A. I have to, sir.

Q. Would you have given the statement otherwise if you hadn't [60] been beaten?

A. No, that is why I refused to give it and asked for my lawyer, sir, but since they beat me up, I cannot stand any more.

Q. I see. No appeal was taken in your case?

A. I think we asked, sir, but they didn't go through with it, I guess, sir.

Q. Didn't go through with it?

A. Yes, sir.

Q. Did you have a lawyer appointed for you, or did you hire a lawyer?

A. We hired one, sir.

Q. You hired one?

A. By my friend, my friend hired one.

Q. But there was never any appeal in your case?

A. I don't remember. I think we have appealed, sir.

Q. You filed a notice, but it was never appealed?

A. They never come through.

Q. You thought it was, is that it?

A. Yes, sir.

(Testimony of Albert Gonzales.)

Mr. Etter: At this time I would like to move for admission into evidence of Petitioners' Exhibit 2 for identification.

The Court: It will be admitted. [61]

(Whereupon, the document previously referred to was admitted in evidence as Petitioners' Exhibit No. 2.)

Mr. Etter: That is all, Mr. Gonzales. You remain there.

The Court: Yes, you may cross examine.

Cross Examination

Q. (By Mr. Dimmick): I just have a couple of questions, Mr. Gonzales. A. Yes, sir.

Q. Now you had a trial before a jury, is that right? A. Yes, sir.

Q. And you had two lawyers representing the three of you? A. I have——

Q. There were two lawyers representing all three of you together? A. Yes, sir.

Q. Your lawyer was named Freeland?

A. Freeland, yes, sir.

Q. Did you have an opportunity or did you take the stand in your own defense at the trial?

A. I don't get you, sir?

Q. Did you have an opportunity to or did you take the stand in your own defense at the trial of this matter for which you have been sent to prison?

A. No, they put me in the stand, sir. [62]

Q. That is what I say, you testified at the trial?

A. Yes, yes, sir.

(Testimony of Albert Gonzales.)

Q. Well, did you tell the Court all about these things that you are telling us now?

A. Well, there is lots of these things—these things we are not allowed.

Q. There was no one in the courtroom who was intimidating you or beating you or in any way molesting you, was there, in connection with anything you said? A. No, sir, no, sir.

Q. You had an opportunity to say anything that you wanted to say in your own defense?

A. Well, I was not allowed to say something, sir, just only the question and answer.

Q. Yes, but you had your counsel who was prompting you as to what to say or not to say by way of questions and answers? A. Yes, sir.

Mr. Dimmick: No further questions.

Mr. Etter: Is that all?

Mr. Dimmick: Yes.

Mr. Etter: That is all.

The Court: As I understand it, you didn't tell what you have told here about this beating at the trial? I say, at the trial, did you testify about the policemen beating [63] you?

A. Some part of it, your Honor, because I was not allowed. I mean, the prosecutor, he just asked me a question, I just answer according to the question, because they cut me off all the time. I tried to put some of those things, but they cut me off.

The Court: Yes, all right.

(Witness excused.)

Mr. Etter: Now there are two other petitioners, but I don't those two can add anything to the testimony here, your Honor. Their affidavits are there and I have them here for questioning on those affidavits if Mr. Dimmick wishes to pursue the matter.

The Court: Any cross examination on that?

Mr. Dimmick: No.

The Court: I haven't had an opportunity to read this second statement here, your Petitioners' Exhibit 2. What does he say in here?

Mr. Etter: He states there that he, and eventually he and Mr. Coluya and Mr. Giron with Mr. Giron driving a car, went out to Renton. After they got there, this fellow Molinda came along in his car and there was a shooting battle out there and Molinda was shot or something and he ran or somebody else ran. That was the story. That is, substantially, [64] he implicates both the other men in it, who, up until that time, hadn't been involved.

The Court: Is that all the evidence that you have to present then, Mr. Etter?

Mr. Etter: That is correct, your Honor.

The Court: Do you have any evidence, Mr. Dimmick?

Mr. Dimmick: Well, your Honor, I don't know whether these have been filed in this matter or not, but I have the warrant of commitment to the penitentiary, I have the judgment and sentence and the information against these three men, and I don't know whether they are a part of the file at this time.

The Court: I think perhaps you better present them.

Mr. Dimmick: If not, I would like to present them. They are photostats, the same as counsel presented.

The Clerk: I have marked Respondent's Exhibits 3, 4, 5 and 6 for identification.

Mr. Dimmick: I would like to ask that these be admitted.

The Court: Have you seen these?

Mr. Etter: Yes, your Honor. I think it was the ordinary warrant and commitment and sentence.

The Court: You have no objection to them?

Mr. Etter: No, I have no objection to their admission. [65]

The Court: They will be admitted, then.

(Whereupon, the documents above referred to were admitted in evidence as Respondent's Exhibits Nos. 3, 4, 5 and 6.)

The Court: This, I think, illustrates the disadvantage of trying these cases. I think Mr. Etter came into this case after it started and then, of course, Mr. Dimmick has come into it only recently. I have just looked over the petition here hurriedly, but I have it summarized, and I don't believe it set out this particular ground of use of involuntary confession, did it?

Mr. Etter: No, they didn't elaborate on it, but, as I pointed out to your Honor in this one statement, "The King County officials have used coercion and duress against your petitioner, all against the Constitution of the United States."

The Court: Where is that?

Mr. Etter: Paragraph VI, the last line of paragraph VI. I asked your Honor if I should elaborate on that in a new petition.

The Court: I missed that, I didn't know that was in there.

Mr. Etter: By appropriate affidavits, specifying what the duress and coercion were. [66]

The Court: Yes, and the affidavits were served here on the 3rd of February, I believe; isn't that right, Mr. Dimmick?

Mr. Etter: They were served on the 29th, but Mr. Dimmick explained to me about the switchover in the office over there.

Mr. Dimmick: Yes, Mr. Naccarato left the office on the 31st, your Honor.

Mr. Etter: I served them a week ahead of time, but I can understand what happened over there.

The Court: Yes, I can understand very well the disadvantage under which Mr. Dimmick is working here.

I might say that this appears to me to be one of those cases which don't come very often, that is, it is rather an unusual situation where there is a real factual issue on a question, the resolution of which in favor of the petitioner would warrant the granting of the writ.

Now, as I understand it from the decisions of the United States Supreme Court, there can be no question but what the use of a confession that is extracted by force and threats and violence, as this one was, an involuntary confession, a forced con-

fession is used in the trial in which a defendant is convicted, the courts will not go into the question of whether he might have been convicted by the jury from other evidence; the use of the forced confession taints the [67] conviction and renders it invalid. It is a violation of a man's Constitutional rights under the 14th Amendment.

But certainly we can say here that here is a proceeding and police methods and methods of prosecution that shock the conscience and we can say are manifestly unfair and un-American and they violate the due process. I think that if this man is telling the truth, if I should say that I believe what he says—and it is uncontradicted so far—he would be entitled to release on habeas corpus, and that is just my tentative view of it.

I don't believe that I am precluded because he was represented by counsel and the same question was raised or may have been raised in his state court trial, because the Federal Courts on a question of this kind resolve the question for themselves, the factual question, and are not bound by the decision of the state courts. I think I am right about that.

Mr. Etter: That is correct. *Ashcraft vs. Tennessee* sets that out: they are not bound by a jury or a court. In fact, they are supposed to make their independent investigation.

The Court: Of course, there would be more reason for taking that attitude where there has been no appeal to the Supreme Court of the state, and there wasn't in this case, as I understand it.

Mr. Dimmick: Your Honor, if I may make a little argument here.

The Court: Yes. I was just stating my tentative views here in order to shorten the argument.

Mr. Dimmick: That's fine.

Well, we have here three men who have a counsel. I don't know if what the man says is true or not. I presume that it isn't true. But they had counsel, were represented, and it is the type of thing, I would assume, that is peculiarly within the province of the triers of the facts and of the law to determine whether or not a man is telling the truth and, of course, it is up to counsel to see that he is given an opportunity to tell the truth, and I just assume, without having read the transcript or anything, that they were given that opportunity.

Now it is alleged in one of the affidavits, if your Honor will note, that these three men had something like \$8,500 with which to handle this matter. Apparently they deeded some property to one of the attorneys and there was an appeal made from the Superior Court of King County. The records, the certified copy of judgment and sentence and notice of appeal were mailed to the Clerk of the Supreme Court on May 3rd of 1950, and then following that nothing was done. Then on September 8th, the appeal was dismissed.

These men have had the writ of habeas corpus in [69] our local courts, the Superior Court to the Supreme Court of the State of Washington, to the Supreme Court of the United States on certiorari, all of which have been denied.

The Court: I think I am familiar with the procedure, however, on writ of habeas corpus in the Supreme Court of the State of Washington, and there is no hearing on fact issues. These men never leave the penitentiary when their hearing is had in Olympia. The Supreme Court looks at the petition and looks at something else, I don't know what, but if a fact issue of this kind is raised, they have no opportunity to testify, they have no opportunity to support the allegations of their petition, they are just denied without any hearing, so that that doesn't carry much weight with me, legally or otherwise.

Mr. Dimmick: Well, I assume that the state will get some opportunity to present evidence.

The Court: I was just getting to that.

Mr. Dimmick: Some affidavits.

The Court: I was just coming to that, the reason that I was stating my tentative views here.

I think that if a confession is beaten out of a man and it is used to convict in the state court, that he has a right to appeal to the Federal Court, after exhausting his state remedies, for relief for violation of his Constitutional rights, and the fact that he was represented by [70] counsel in the state court trial, or even that the question of the admissibility of the confession is raised and passed upon there, is not, as I understand it, binding on the Federal Court, it is my duty to re-examine it.

Here, it seems to me, that there should be something, we should hear from the policemen, in other words, if they deny this, and of course every case

has to stand upon its own merits. But we don't have to have the Wickersham Report to know that in some instances brutality of this type is used by the Seattle Police Department. It has been brought out in my Court and I would be rather ignorant of the ways of the world if I didn't know that in my position, that the Seattle Police Department does use these brutal methods.

Mr. Etter: I just have this last week in the headline——

The Court: That is the reason I don't brush these things off; I think they should be given consideration; and if these policemen don't see fit to deny this, I think I will have to grant this writ.

Now I will give the state an opportunity to contravert this, of course.

Mr. Etter: That is correct, they may contravert it.

The Court: And another thing, just thinking aloud, this confession, if it was used, improperly extorted and was involuntary and was used against Gonzales, it would be in [71] violation of his Constitutional rights and it wouldn't be admissible against the other defendants. If it is admitted, the court should have instructed the jury not to consider it as evidence against those who did not make the confession, even though their names are mentioned in there and they are implicated.

Now I wouldn't think that this would taint the conviction of the others, unless it was admitted as evidence against all of them, and it seems to me that in the absence of some affirmative showing,

I would have to assume that the state court properly applied the rules of evidence. That would be my thought on that feature of it.

Now I think that what we should do is to continue this over until the next hearing, along with those others you mentioned here, and the state will be given an opportunity to meet this evidence.

I might say, Mr. Dimmick, if you use affidavits, I think they should be served upon Mr. Etter in time so that he can submit interrogatories to the policemen, if he cares to do so, or perhaps take steps to take their depositions.

Mr. Etter: That's right.

The Court: Because I doubt if you will bring them all the way across here in person, will you?

Mr. Dimmick: Well, it only takes six hours to get over here. [72]

The Court: Well, I think it would be preferable to have them here because it is always better to have a witness in person. It is hard to judge the credibility of a witness by an affidavit.

Mr. Dimmick: I see what you mean. The main argument is against Sprinkle and Seth?

Mr. Etter: Sprinkle and Seth, Thomas and Ryan, and four or five of them.

Another thing I think your Honor has in mind, but I think Mr. Dimmick should probably be advised, there is a question on the matter of validity of the statements here and there is a question that certainly is going to be argued, as far as I am concerned, that if, as a matter of fact, everything was patty cake down in the police station in the City

of Seattle, the question has to be answered, I think, in this proceeding why it was that this man was held down there right in the Seattle jail when there is a magistrate right upstairs available in that police court in Seattle. I mean, if there was no coercion, everybody was happy, there is a question here in my mind whether there was a reasonable time under the Washington statute to take him before a magistrate. Why wasn't he taken? That is a mandatory part of our Washington statute. I think that is a matter that is to be considered, too.

The Court: I want it clearly understood, Mr. Dimmick, [73] that whatever may or may not be the methods used by the Police Department of Seattle, which I do not approve, I don't in any way hold you responsible for it.

Mr. Dimmick: Well, your Honor, I am not going to uphold their methods if, in fact, they are as were suggested.

The Court: In this case, we are finding out what they did in this case.

Well, this case will be continued then until the next habeas corpus hearing day, which will probably be early in May sometime and I will give you notice of it. But you can go right ahead with your exchange of affidavits here and other matters in this case. If you are going to bring the men over here personally, of course, then we can just have the hearing at that time.

Mr. Dimmick: I will contact the Seattle Police Department and those that I can bring, I will bring,

and those that I can't bring, we will make arrangements for affidavits.

The Court: Yes, you might use affidavits on part of them and bring the others over.

Mr. Etter: Fine.

(Whereupon, the hearing in the above case was adjourned until the next habeas corpus hearing day in Walla Walla, Washington, of the Court.) [74]

Walla Walla, Wash., July 14, 1953, 8:30 o'clock a.m.

(The hearing in the instant cause was resumed pursuant to adjournment of February 5, 1953, the same parties being present as before, and the following proceedings were had, to-wit:)

The Court: In the matter of the application of William Giron, Gonzales and Coluya against Cranon, you have a copy of the return and answer, Mr. Etter?

Mr. Etter: Yes, I have seen a copy of it.

The Court: All right, you may proceed.

Mr. Etter: I gather, your Honor, that the return and the answer is a general denial of the allegations of the petition filed by the petitioners, and I also assume that the return and the answer is a denial of the matters set forth in the affidavits of the three petitioners supporting the petition which alleged the subsequent claims of the petitioners in regard to their deprivation of rights guaranteed to them by the Federal Constitution. I further assume that

the answer is merely an allegation that the commitment and judgment and sentence are valid and, I might say, a re-allegation of the affirmative defense that the present petition and the affidavits in support there are in the nature of a collateral attack on the judgment. [75]

Of course, on the motion to dismiss, that was before your Honor and your Honor held that it is not a collateral attack.

Mr. Dimmick: As far as the motion to dismiss is concerned, I am disregarding that for the purposes of this hearing.

Mr. Etter: So I assume that it is just a restatement of the grounds there, and that it is the position of the respondent that the general denial of the petition, of the allegations and the subsequent matters set forth in the affidavit, that it now becomes the duty of the respondent, in view of the showing made here at the previous hearing, to show support, in testimony or otherwise, of its general denial of those allegations which are set forth in the affidavit.

Of course, to review that very briefly, your Honor has merely to refer to the affidavit of Albert Gonzales in which he alleges the facts, circumstances and happenings prior to the time of the elicited confessions, of which there were two, one made at one particular time following the arrest, the other made sometime subsequent during a questioning period, as alleged in the affidavit, of some 24 or 26 hours, in which there are allegations of assault and threatened assault, coercion and fear inducing the

statements which were made by the petitioner and which the petitioners [76] claim are in the nature of a confession and, therefore, untrustworthy and not to be considered by the Federal Court in reviewing the matter at this time.

Now the subsequent allegations upon the testimony of Mr. Gonzales were almost identical with those alleged in his affidavit, so it appears to me it now becomes the duty of the state to show facts and circumstances supporting their denial of those.

The Court: Yes, this really is a continued hearing here. As I recall, testimony was put on by the petitioners at the prior hearing and the matter was continued over to give the state an opportunity to present its defense.

Mr. Dimmick: That is correct.

The Court: So you may proceed when you are ready.

Mr. Dimmick: Well, your Honor, I take it then from what Mr. Etter says that the other two people over here, Cohya and Giron, their entire claim for release is based solely on Gonzales' evidence. Do I understand that right, because they didn't take the stand in the prior proceedings?

Mr. Etter: Of course, counsel doesn't have to assume that position. The position that we take on the showing that has been made, and I think the Court is well aware of it, that the matter of an induced, involuntary, untrustworthy confession is of no more import or of no more value against joint defendants in the same trial than it is against the [77] individual from whom they secured it.

This isn't a case that involved separate trials; this is a joint case of three defendants.

The cases are uniform—I cited one last time—it is the rule that an involuntary confession is no better against these two men than it is against the man who gave it.

The Court: May I suggest, gentlemen, you defer argument until after we have all the testimony?

Mr. Dimmick: Am I at liberty to have Mr. Gonzales take the stand for cross examination at this time?

The Court: I see no objection to that. He was on before, you may put him on again if you wish.

ALBERT GONZALES

a petitioner herein, called and sworn as a witness on his own behalf, was examined and testified as follows:

Cross Examination

Q. (By Mr. Dimmick): Your name is——?

A. Albert Gonzales.

Q. Albert Gonzales? A. Yes, sir.

Q. Now I don't recall your testimony in the first proceedings too well, but basically you alleged that certain police officers in the Seattle Police Department abused you and threatened you and, if I understand correctly, they actually used physical force? A. Yes, sir.

Q. Which one of these fellows here did that, Mr. Gonzales? A. He is not here now.

Q. He is not here now? A. No.

(Testimony of Albert Gonzales.)

Q. Neither one of these men (indicating) beat you up in any way? [79] A. No, sir.

Q. This fellow (indicating), do you know his name now? A. He just Sergeant Seth.

Q. Sergeant Seth?

The Court: I didn't get that?

A. Sergeant Seth, your Honor.

The Court: Sergeant what?

A. Seth.

Mr. Dimmick: Sergeant Seth, S-e-t-h.

The Court: How do you spell that?

Mr. Dimmick: S-e-t-h.

A. S-e-t-h.

Q. Who was it that abused and threatened you?

A. Well, at first, Mr. Dimmick, I don't know his name. Later, my attorney told me his name—Thomas.

The Court: Thomas?

A. Thomas.

Q. (By Mr. Dimmick): Thomas is the man that abused you and threatened you?

A. No, he beat me up.

Q. He beat you up? A. Yes, sir.

Q. And when was this? What time was this after you were arrested?

A. Well, as soon as I arrived in the station there, about [80] probably five minutes later.

Q. Five minutes later? A. Yes, sir.

Q. That was Thomas? A. Thomas.

Q. Did that—

(Testimony of Albert Gonzales.)

The Court: It was about 1:30 in the morning when you were brought in?

A. I don't know exactly.

The Court: It was after midnight?

A. Yes, sir.

Q. Now you told your attorney about having been beat up, didn't you?

A. Yes, sir, I did.

Q. And didn't you, or did you, I should say, did you, as a result of having relayed this information to your attorney, have an examination by a doctor?

A. No, sir.

Q. You never had any examination by a doctor?

A. No, sir, because when I was—when I was beaten up, I was taken to they call Sergeant Ryan, because they introduced him to me, himself, at that time.

Q. Now this confession—you signed two confessions? A. Yes, sir.

Q. And the first one, I should say, you didn't sign two [81] confessions. The first one that you signed was signed what, about 12 hours after your incarceration?

A. I don't recall the hours there, sir.

Mr. Etter: I might say they are in the exhibits there, the time on them, both the statements.

Mr. Dimmick: Yes. Where are they?

The Court: They are in the file here.

The Clerk: Petitioners' 1 and 2.

Q. (By Mr. Dimmick): Now, showing you what

(Testimony of Albert Gonzales.)

has been marked as Petitioners' Exhibit No. 1, that is the first statement that you signed?

A. Yes, this is the one.

Q. And that was signed, is that correct, there it says at 5 a.m.; that was to say it was taken at 5 a.m., January 7th?

A. Well, I don't recall the hour, sir.

Q. Well, what is that, four, five hours after your arrest?

A. Well, I was not paying attention to the hours any more, sir, because I was down there being questioned.

The Court: You will have to speak up a little louder.

A. I don't recall exactly the time, your Honor.

Q. (By Mr. Dimmick): What time was it that you were arrested, do you remember that?

A. No, I don't recall, sir. They just put me up to the station, is all. [82]

Q. Now, then, just to get things straightened out, this confession here, this instrument here which is marked Petitioners' Exhibit No. 2, will you identify that?

A. That is the same of Sergeant Seth, yes, sir.

Q. What is it, Gonzales?

A. What do you mean, sir?

Q. What is it, what does it purport to be? Do you know? A. Very hard to recall, sir.

Q. Well, is it the second confession or the second statement?

(Testimony of Albert Gonzales.)

A. Well, second confession, too, sir, because it is signed by Sergeant Seth.

Q. Whose signature is that right there (indicating)? A. That is my signature, sir.

Q. Well, now, then, is this the second statement of the confession that you signed?

A. Yes, sir, yes, sir.

Q. Okay. You have stated in your affidavit that you were arrested at 1:30 a.m. in the morning of Saturday, January 7, 1950? A. Well—

Q. That is, I take it, fairly accurate?

A. Well, that is the Sergeant that wrote that, sir. I don't know exactly the hour.

Q. Well, now, this affidavit here, I take it that you wrote [83] that, Mr. Gonzales?

Mr. Etter: Maybe it would be a good idea to let him examine it.

Mr. Dimmick: Yes.

Q. Well, this thing is the affidavit that you wrote in support of your petition for writ of habeas corpus, Albert. A. 1:30? 1:30, yes.

Q. Does that refresh your memory in good shape? A. Yes, sir, that's right.

Q. Then the first paper that you signed was signed at approximately five or thereafter the same morning that you were picked up, we'll say four hours, you signed the first statement?

A. I think so, sir.

The Court: What is the hour on the first statement?

Mr. Dimmick: About 5 a.m., your Honor.

(Testimony of Albert Gonzales.)

The Court: Oh, all right.

Mr. Dimmick: Approximately four hours.

The Court: I see, all right.

Q. (By Mr. Dimmick): Now, then, you were picked up and at approximately five minutes after you were brought down to the jail, this man Thomas beat you up, and was he the only person in the station at that time who abused you or made any threats toward you to get you to sign this first statement at five o'clock? [84]

A. There was a Sergeant Ryan there.

Q. Sergeant Ryan?

A. He was the one to let me sign it, sir, because the Detective Thomas didn't stay long, he beat me up and he went back to his friend and came back and——

Q. Thomas, after he beat you up, he left?

A. He left and came back, sir.

Q. He left. How long was he gone, do you recall?

A. Well, he went out and next door about two, three minutes, I guess, and came back, and that is the time when he threatened me. He said, "God damn it," he said, "if I see you on the sidewalk, I'm going to kick hell out of you."

Q. Now this fellow Thomas, you say, was he there during the time that Sergeant Ryan or Ryan was beating you up?

The Court: He said Thomas beat him up.

Q. (By Mr. Dimmick): Thomas was the one that was beating you up? I don't want to get you

(Testimony of Albert Gonzales.)

confused here. I'm getting confused. Thomas is the one that beat you up, and he left, and then you said a Sergeant Ryan came in?

A. No, Sergeant Ryan was sitting in the chair, sir, because I was talking to him. He was questioning me about——

Q. Well, Sergeant Ryan was there during the time that Thomas was beating you up?

A. Yes, sir. [85]

Q. Was he assisting him in any way?

A. No, sir, he was sitting down there when Thomas beating me up, and then I heard a word come from Sergeant Ryan, he said, "That is enough."

Q. Yes?

A. I said—well, I heard that, that is very clear in my ears. And then Thomas give me a couple of beatings again, just a couple of blows, then he left.

The Court: You say Sergeant Ryan was sitting there while Thomas was doing that?

A. Yes, sir. He told him, he say, "That is enough."

Q. (By Mr. Dimmick): Now while Thomas was absent, what did Ryan say to you, if anything?

A. Sir?

Q. I said, while Thomas was absent from the room, what, if anything, did Sergeant Ryan say to you?

A. Well, I was—then I, as soon as the beating. I just lean a little bit in the corner.

Q. Pardon?

(Testimony of Albert Gonzales.)

A. I lean a little bit in the corner, sir, because I was out of breath.

Q. Yes?

A. I say, well—and then he said, Ryan said, Detective Ryan said, “Come in here.” So I sit down. He said, “You should have tell something at first, then you don’t have [86] that kind of beating.”

Q. All right. Now this happened, as you said, five minutes after you were brought down to the police station. Now we have accounted for roughly five minutes of about four hours. Now would you tell us what happened between the time that you were beat up and the time that you signed this confession, signed this first statement, at five o’clock?

A. Well, after the beating and after the signing of the confession—

Q. No, no, I want to get up to the signing of the confession, Gonzales. Let’s get after the beating, let’s take this period between the beating and the time you signed the first piece of paper, the first statement?

A. As I recall, sir, after the beating and I was talking to Sergeant Ryan, then he wanted me to tell something about the shooting, so I mentioned about Fidel threatening my life.

Q. Fidel threatening his life?

Mr. Dimmick: The deceased.

The Court: Oh, yes.

A. And then I mentioned about—I mentioned about we was trying—I was trying to have a meeting with Fidel, and, well, he said something that

(Testimony of Albert Gonzales.)

he don't like to hear about the meeting with Fidel, he want me to forget those words. [87]

Then I asked him if I could call up a lawyer, and then after awhile, he think it over, "Who is your lawyer?" So I told him it is Mr. Patrice.

Q. Who? A. Patrice.

The Court: I don't think the witness understood counsel's question. What he asked you was what you did all this four hours that he says elapsed from the time you came in until you signed the first paper. What happened all that time? You don't have to say everything you said or everything anybody said; just tell what happened, in a general way, during that four hours. That is your question, isn't it?

Mr. Dimmick: Yes.

Q. Let me put it this way, Albert, so you can answer it more quickly: Were you threatened or abused or beat up any more during the period of some three hours and fifty minutes after the first beating before you signed the first paper?

A. You mean in that little time, sir?

Q. Yes?

A. Well, when I was talking to Sergeant Ryan after my confession and I see if I could call up a lawyer, well, I heard him make a little remark about an attorney or something——

Q. Speak up a little louder. [88]

A. I have a little sore throat, sir.

Q. All right.

A. I asked him if I could call up my attorney,

(Testimony of Albert Gonzales.)

sir, and so he said something about the remark, about the attorney I engaged during the shooting of my brother. So I didn't pay any attention then because I was kind of scared.

Q. Well, now, let's get back to the original question, if we can: During the remaining period and before you signed the first paper——

A. Yes, sir.

Q. ——were you again beaten or threatened or abused? A. No, not exactly, sir.

Q. Not exactly. Well, let me ask you this: Was there any force at five o'clock to prompt you or to force you to sign this paper?

A. Yes, Sergeant Ryan just told me to sign it, sir, and I cannot say no.

Q. You say he told you to sign; is that all he said, just sign this?

A. He stated first——

Q. Pardon?

A. I hesitated at first, but I might as well sign it, so I have to sign it, I cannot argue with officers.

Q. Did he hit you or threaten you in any way?

A. Well, of course, the sound of his voice, sir, I am afraid [89] of that, see.

Q. You are afraid of the sound of his voice?

A. So I had to do it, I had to sign it.

Q. Do you recognize either of these two men sitting in the back of the room, Albert?

A. Well, that detective, I can't recall exactly, sir.

Q. This one here (indicating)?

(Testimony of Albert Gonzales.)

A. Yes, sir.

Q. You don't know who he is. Was he present at any time during this thing you are talking about, this beating up and all?

A. Well, I can't recall exactly the face, but I only remember the names.

Q. You don't recall his face, you just remember the names of the people?

A. The names.

Q. What about the fellow back there without any hair, do you recognize him?

A. Yes, sir.

Q. Who is that?

A. That is Detective Thomas.

Q. That is Detective Thomas, and he is the man that beat you up?

A. Yes, sir.

Q. Now, Albert, after you signed this statement at five [90] o'clock, what happened to you then?

A. They took me—they took me to a car, sir, downstairs.

Q. Who took you to a car?

A. Two detectives.

Q. Took you to a car?

A. Yes, sir, downstairs.

Q. Yes?

A. And the other that went down there in the front seat, detective, I forget their names, sir, and the other detective sitting with me in the back with a handcuff in my back, and he got the gun down in my ear here, behind my ear (indicating).

Q. This is all after you had signed this?

(Testimony of Albert Gonzales.)

A. Yes, sir. So he said—I was trying to ask him where are they going to take me, but I was afraid, sir, because he said, “If you move, I’m going to shoot your head off.”

Q. Let’s just stop there for a minute now. Were any of the men involved in the previous questioning of yours, were they in the car?

A. No, no, sir.

Q. None of these men here?

A. No, sir.

Q. They turned you over to a new group, is that it?

A. Not exactly turned, sir, they just picked me up.

The Court: I can’t hear that. Wait until this truck gets [91] by. All right.

Mr. Dimmick: Q. What I said was, Mr. Gonzales——

A. Yes, sir.

The Court: You are talking so that I can hear, Mr. Etter can hear, not just to this man. Don’t just talk to him; speak so we can all hear you.

Mr. Etter: Step back a little, counsel, maybe he will talk up.

The Court: Yes.

Mr. Dimmick: Okay.

Q. You say that the group of men who questioned you and forced this thing out of you here, they left you and you were taken by a new group of men in this car?

A. No, that is not a group. You mean a group of detectives, sir?

(Testimony of Albert Gonzales.)

Q. Yes.

A. There is no group of detectives.

Q. You said there were three or four.

A. It is not a group of detectives, sir, because Detective Thomas and Sergeant Ryan, he called himself down there, is the only one down there, sir.

Q. Yes?

A. But after the confession, there is a couple of detectives just came in and say, "We are going to take him in."

Q. That is what I say—— [92]

The Court: He says there wasn't any new group; that only Ryan had him sign this; isn't that right?

A. Yes.

The Court: Sergeant Ryan.

A. Sergeant Ryan.

Mr. Dimmick: Q. I say now after you signed this, then, some new men——

A. Yes.

Q. ——came and took you away in a car?

A. Yes, sir.

Q. Where did they take you?

A. They took me to a house, sir.

Q. Do you recall where this house was?

A. Yes, Mr. Giron's house, sir.

Q. Mr. Giron's house?

A. Yes, sir. I was afraid at first because I thought they were still going to take me for a ride or something. I didn't know anything about it.

Q. Yes?

A. They didn't even question me when we arrived down there.

(Testimony of Albert Gonzales.)

Q. This was, then, we'll say that when you went for this ride with these other officers, this was some-time after five o'clock in the morning?

A. Well, I don't recall the time, sir.

Q. Was it immediately after you signed this?

A. Yes, sir.

Q. It was. And then how long were you gone from the police station?

A. Well, I don't recall exactly, sir. I think it is around half an hour.

Q. Then they brought you back?

A. Yes, sir.

Q. And they put you back in jail?

A. In the cell, sir, yes.

Q. Then we have another confession here?

A. Yes, sir.

Q. Another piece of paper you signed. Now you stated here that this thing was signed on January 8, 1950, at approximately 12:30 a.m. I think that is the date. That is when the questioning started and it was signed at approximately 2:10 a.m.?

A. Yes.

Q. Now, then, you started giving this statement, at least according to the statement itself that you signed, at approximately 12:30 a.m. on January 8th. That is approximately—well, that is 24 hours from the time you were picked up, roughly?

A. I don't exactly recall the time in there any more, sir.

Q. I mean it is on here, Albert, and you signed this?

(Testimony of Albert Gonzales.)

A. I don't recall the time any more because I was so hungry, [94] I didn't have anything to eat all day and night, I didn't sleep at all, and my mind is so blanked out and everything like that.

Q. All right. Well, about 24 hours, then, after you were picked up, then you began giving the Seattle Police Department this second statement. Now, then, to whom did you give this statement, do you remember?

A. To Sergeant Sprinkle, Detective Sprinkle, I guess, sir, yes.

Q. What about Seth here?

A. Well, Sergeant Seth, they wanted me to tell the story when they brought me up, sir.

Q. Yes?

A. I think it is more clearer, that way.

Q. Let's start with the time——

The Court: What was the first name he mentioned?

Mr. Dimmick: Sprinkle, your Honor.

The Court: A police sergeant, is he?

Mr. Dimmick: Yes.

The Court: Or police officer?

A. Officer.

The Court: Policeman, all right.

A. Detective.

Mr. Dimmick: He is a detective, your Honor.

The Court: I see, all right. [95]

Mr. Dimmick: Q. All right, go ahead, Albert.

A. Before Sergeant Seth brought me up——

Q. That is this man here (indicating)?

(Testimony of Albert Gonzales.)

A. Yes, sir. There was a couple more detectives that brought me up, but I don't recall exactly their names. They just wanted me to make another statement, but I refused. So then when I don't give in, they put me down—they put me in the cell again. I don't recall exactly the times and that any more. Sergeant Seth came over there and brought me upstairs.

Q. Sergeant Seth took you out of your cell and took you upstairs?

A. Yes, sir. Well, Sergeant Seth, I complained to Sergeant Seth about the beating. He know something about it, too, because he said that.

Q. What did he say, do you recall?

A. Well, when I complained to Sergeant Seth about the beating, he said, "Well, we don't do that," he said. I contended then that Sergeant Seth—

Q. Just a minute. Okay.

A. I thought at first then that maybe Sergeant Seth would do that, but the rest might do it.

The Court: We may have to put this over until the pea harvest is finished.

Q. (By Mr. Dimmick): Okay, go ahead, Albert. [96]

A. So then Sergeant Seth told me that—then he introduced me—his name—I don't know Sergeant Seth before, I don't know any detective at all, and then he introduced to me and Detective Sprinkle came around and he introduced me, this and that. And then Detective Sprinkle went out

(Testimony of Albert Gonzales.)

and Sergeant Seth sat down, he let me sit down there, and he said, "Well, I know—" he said, "I know your brother," he said. Then he——

Q. Now up to the present time, you hadn't confessed to anything, had you Albert? Up to that time, you hadn't confessed to committing any crime at all, had you? A. No, sir.

Q. You had not confessed to committing a crime?

A. You mean all my life, sir?

Q. No, I mean in connection with the shooting of Fidel Molina, you hadn't confessed to shooting Fidel Molina at that time? A. No, sir.

Q. Not at all. All right now, then, tell me what Sergeant Seth did to force you to sign this confession here in which you admit shooting Fidel Molina and killing him?

A. When Sergeant Seth—we was talking together with Sergeant Seth and he admitted that he knows my brother and he says, "It's too bad," he says, "your brother is very nice," he been receiving the salmon from him, this and [97] that, something like that.

The Court: He received what?

A. Salmon, can of salmon.

Mr. Dimmick: Can of salmon.

A. My brother was a cannery worker down in Alaska. And he said, "Well, you might as well tell some things, what you did, and so on," he said, "and everything is all right and I'm going to help you. He says, I want to start with the beginning,"

(Testimony of Albert Gonzales.)

he says, because they have to have a beginning to start this trouble, he said.

Well, I mentioned about Fidel Molina threatening my life and I have been moving from one place to the other every week. Sometimes I move twice.

Q. Because you were afraid of Fidel Molina?

A. Yes, I am afraid, and I tried to make a meeting with Fidel so that I don't want him to bother me because I am working and I have my niece and nephew, the son of my brother, three kids, and I was helping them.

So he knows, Sergeant Seth knows the reputation of Fidel, there is no doubt of that, and then he was talking about it, and then he take a picture out from his pocket and he was showing me a picture of a Philippino body, was riddled with bullets. He picked his body up in highway in Tacoma in 1949. And then he said, "I have a suspicion of Fidel that he did this, but I don't have any proof," [98] he said. So I told Sergeant Seth, I said, "If you don't have any proof, Sergeant," I said, "you should at least have picked him up and question him so that he will not do things like that, so that I will be out of trouble myself."

Q. Go ahead.

A. And so he said—then he said, he asked me if I am going to talk, but I asked Sergeant Seth if I could call up my friend or a lawyer or the Consul, but he said, "Not this time," he said. He told me "not this time." So——

(Testimony of Albert Gonzales.)

The Court: You asked him what? If you could have a lawyer?

A. To call up my friend or a lawyer or the Consul.

The Court: He said you couldn't?

A. No, sir.

The Court: Who was that?

A. Sergeant Seth.

Q. (By Mr. Dimmick): This man——

A. He said "Not this time," he said. And then he said—I complained, I complained my inside hurting too much, and so he went out and picked up a Coca Cola. "You better drink this," he said, so I drink the Coca Cola because I was so hungry, to refresh inside of me.

Q. Well, now, let's move along a little bit here. Tell me why you signed this confession in which you admit having [99] something to do with the killing of Fidel Molina.

A. Before I make that statement, sir—well, you see, Sergeant Seth and Detective Sprinkle, they switched together all the time to question me.

Q. You mean one would leave the room?

A. That's right.

Q. Were they in there together?

A. No, one after the other, sir.

Q. They went in and out, back and forth?

A. They switched together to question me.

Q. I see. In other words, you would be sitting here and Sprinkle (indicating)——

A. No, no, Sprinkle was not here, he is outside.

(Testimony of Albert Gonzales.)

Q. He is outside? A. Yes, sir.

Q. And Seth is questioning you?

A. Yes, sir.

Q. And then Seth would leave and Sprinkle would come in and question you?

A. Yes, he go down and talk to him.

Q. That is the way the entire thing went?

A. That's right, sir.

Q. At no time were the two men together with you?

A. No, sir. Only the time when I was introduced, sir.

Q. Pardon? [100]

A. Only when Sergeant Seth introduced me.

Q. Sergeant Seth introduced you to Sergeant Sprinkle, and after that only just the two of you, you and one of the officers, were together at any time? A. That's right.

Q. Go ahead.

A. And then the one thing, I made that statement, when Detective Sprinkle, when I refused to make the statement to Detective Sprinkle, he said, "Well, you have to make a statement or I'm going to turn you over down there and get the same beating."

Q. Turn you over to——?

A. He said turn me over down there and get the same beating.

Q. Oh, okay.

A. So because I was too tired that morning, and then I was so tired that morning, and then I had

(Testimony of Albert Gonzales.)

to talk, I have to say something to ease the pressure from me so they won't put me down there. So then after that, I said to the Detective Sprinkle, I said, "What am I going to say?" I say. "Well," he said, "just tell them that you went down there and shoot Fidel." I said, "Well, that is not the point, sir. There is a beginning before we went over there. We went over to Fidel to talk to him in peace." "Well, then, sorry," he said, "just go down there and say something." There is nothing much I can do. I cannot [101] argue with officers.

Q. All right now, then, that was what forced you to sign this? A. Yes, sir.

Q. Was Sprinkle telling you that you should sign and all that and threatening you?

A. Not exactly sign it, to make the statement.

Q. To make the statement? A. Yes, sir.

Q. And then threatening to have you beat up if you didn't, is that right? Now how about Seth here?

A. Well, after that—after that——

The Court: Did he say that was Sprinkle?

Mr. Dimmick: Sprinkle, your Honor, yes.

A. Then after that, Sergeant Seth went out and Sergeant—no, Detective Sprinkle went out and Sergeant came in. He said, "Are you ready?" he said. Well, there is nothing I can do, I had to say something to ease the pressure, so I make that statement without mentioning before that how Fidel threatened me, and this and that, because they don't

(Testimony of Albert Gonzales.)

like to hear that. So I just made that just like he direct going over there.

Q. You made this statement here to Sergeant Seth?

A. No, it is not that statement, sir, it was something in there in the recording that I didn't know. That is a [102] statement that I made in front of Detective Sprinkle, because—

The Court: I didn't understand who he said. Who did you give this second one to?

Mr. Dimmick: He made this, he said, to Sergeant Sprinkle.

The Court: Oh, to Sprinkle?

A. It was Mr. Sprinkle that made that statement, sir.

Q. (By Mr. Dimmick): Seth wasn't present at that time? A. No, sir.

Q. You are sure of that?

A. No, sir, no, sir.

Q. Absolutely wasn't present?

A. I know, sir, because they always switched together. They have something, something outside. I didn't know there was a recording then, see. I think there is some hocus pocus down there outside that I didn't know anything about.

Mr. Dimmick: I have no more questions.

Mr. Etter: That is all.

(Witness excused.)

Mr. Dimmick: Sergeant Ryan. [103]

P. H. RYAN

called and sworn as a witness on behalf of the respondent, was examined and testified as follows:

Direct Examination

Q. (By Mr. Dimmick): Would you state your name to the Court, please? A. P. H. Ryan.

Q. And you are a member of the Seattle Police Department?

A. Assigned to the Safe Detail, Seattle Police Department.

Q. Assigned to the Safe Detail?

A. Safe Detail.

Q. And what is your rank?

A. Lieutenant—well, Detective-Lieutenant.

Q. Detective-Lieutenant? A. Yes.

Q. And in January, particularly January 7th and 8th, 1950, were you a member of the Seattle Police Department? A. Yes, sir.

Q. And what was your official capacity at that time? A. Safe investigations.

Q. Safe investigations? A. Yes, sir.

Q. And what was your rank at that time?

A. Detective; same thing.

Q. Detective-Lieutenant? A. Yes. [104]

Q. Now you have been called over here to testify on this thing, and I think you heard Albert Gonzales say that Sergeant Ryan—and you are the only Ryan on the police force and you were associated with this case? A. Right.

Q. That you were present at the time when another detective, Thomas, was busily engaged in

(Testimony of P. H. Ryan.)

beating Gonzales up. You apparently said something about "That is enough"; in other words, sort of forced him to stop. Now I will ask you if you were present at an interrogation with Thomas in which Albert Gonzales was the person being interrogated?

A. Sergeant Thomas and I have been partners for seven years in the Safe Detail, and this particular evening our only contact with Albert Gonzales was, Sergeant Foster, who was in charge of the Homicide Detail that evening, or in the morning, asked you if we would bring him down from the jail. He was brought down and I believe the only question—the only words that I have ever said to Albert Gonzales is, "Come along with us." We took him down and set him in the office, and that is the last we ever seen him.

Q. That is, for both you and Thomas?

A. Yes, sir.

Q. How long altogether did you spend with Gonzales?

A. I would say probably take three to four minutes to bring [105] him down from upstairs.

Q. You have no connection with the Homicide Division at all?

A. None at all. We did assist in the investigation, of a checking of the model of the car that was used in that particular murder that night.

Q. And you spent approximately, then, two or three minutes with Gonzales, in other words, the length of time it took you to bring him from wher-

(Testimony of P. H. Ryan.)

ever he was in a cell down to the room where he was later questioned? A. Yes.

Mr. Dimmick: I don't know of any more questions.

Cross Examination

Q. (By Mr. Etter): What department, Detective Ryan, were you assigned to, did you say, at the time this man was arrested on Saturday, January 7th of 1950?

A. I was assigned to the Safe Detail for seven years.

Q. The Safe Detail? A. That's right.

Q. And you were assigned to that detail along with Officer Thomas? A. Yes, sir.

Q. And were you at the Central Police Station up there on Yesler Way, is that where you were, on this evening? [106] A. Yes, sir.

Q. How long had you been there prior to the time that the defendant or the petitioner here, Gonzales, was brought into the Central Police Station, do you remember?

A. No, I couldn't say for sure, but I would say we were in and out. We had this license number on the car that was used in the murder and we had been checking on that.

Q. You had been checking on that. You were checking on a license number of the car that had been driven or used, at least in your view of it, in this particular killing of Molina?

A. That's right.

Q. Is that correct? A. Yes.

(Testimony of P. H. Ryan.)

Q. And when had you been assigned to that particular investigation of the automobile? What time that evening?

A. Oh, I would say it could have been two, two-thirty.

Q. Two or two-thirty? A. Or later.

Q. Or later. Well, then, were you at the Central Police Station when Gonzales was brought in?

A. No, I don't believe we were.

Q. You don't believe you were?

A. My first contact with him was when Sergeant Foster asked us to bring him down from upstairs. I never seen the man [107] before in my life.

Q. All right. At two or two thirty, I assume that you and Sergeant Thomas—is that correct?

A. That's right.

Q. —commenced your investigation to determine the ownership of the automobile that was involved?

A. Well, our hours are from eight o'clock at night until four in the morning, and we do assist the Robbery and Homicide Detail.

Q. And you did assist on this one?

A. Yes, we assisted in checking out the automobile.

Q. All right.

A. And we assisted the next night in making one arrest.

Q. You assisted the next evening in making an arrest? A. Yes.

Q. Was that the arrest of Coluya or Giron?

(Testimony of P. H. Ryan.)

A. Coluya.

Q. Coluya? A. Uh huh.

Q. Now did you have anything to do with the arrest of Giron's wife?

A. Later on in the evening, yes.

Q. Yes.

A. That was early in the morning.

Q. Early in the morning? [108]

A. Yes.

Q. So, as a matter of fact, during your investigation of this automobile, you, and the Sergeant likewise, went up and arrested Mrs. Giron at Giron's house, isn't that correct, or his apartment?

A. There was about seven officers up there that morning.

Q. About seven? A. Yes, sir.

Q. I mean you and Thomas made the arrest, did you not?

A. Well, I wouldn't say that we made the specific arrest, no.

Q. But you were there at the time of the arrest?

A. Right.

Q. Do you recall what Mrs. Giron was charged with, what crime she was charged with having committed?

A. No, I don't believe she was charged, I think she was brought in for investigation.

Q. She wasn't charged with anything, isn't that correct? A. I don't know.

Q. She was brought down to the police station and lodged in jail, is that right?

(Testimony of P. H. Ryan.)

A. I couldn't tell you that, I don't recall.

Q. Well, you saw her down there, didn't you?

A. No, I never did.

Mr. Dimmick: He has testified he doesn't know.

Mr. Etter: Cross examination, counsel.

Mr. Dimmick: Well, my goodness, we didn't raise——

The Court: What is your objection?

Mr. Dimmick: Your Honor, on our direct examination we asked him specifically whether or not there had been any connection with the charges made by Gonzales, and that is as far as we went. Now I don't object if he wants to find out if he arrested Giron's wife, but, heavens, he doesn't have to——

The Court: Well, I got the impression from the direct testimony that he had nothing to do with Homicide, that it was an entirely different department, he had nothing to do with this particular thing, and it appears now that he had quite a bit to do with it.

Go ahead.

Q. (By Mr. Etter): You and Thomas were present at the time that Giron's wife was arrested and you were assigned up there, isn't that correct?

A. Yes, we were not assigned up there; like I say, we just assisted the Robbery and Homicide on the night shift if they are short of men.

Q. You assisted and she was brought down, and then you further assisted the following day by arresting Coluya?

A. The following night.

(Testimony of P. H. Ryan.)

Q. That's right. So you and Sergeant Thomas arrested, or were present at the arrest, of Mrs. Giron? You were [110] assigned to this investigation of the so-called death car and you likewise arrested Coluya, one of the three parties who had committed or had had some sort of part in the commission of the alleged murder, is that right?

A. Right.

Q. All right. When was it that you were sent up, as it were, to have this man Gonzales brought down for questioning? When was that?

A. I couldn't tell you the exact time.

Q. Do you know what time it was?

A. No, I say I couldn't tell you the exact time on it.

Q. I see. All right, how long had you been at the police station before you were requested to go up and get him on this particular time?

A. I couldn't say. I would say that we had been in and out.

Q. You had been in and out. How many times had you been in and out of the police station, say between the time you got the report on this around 1:30, or thereabouts, and the time of the signing of this first statement, which is indicated at five o'clock?

Mr. Dimmick: I object to that. I have never heard the Officer testify at any stage of the proceedings that he got a report of this at 1:30 o'clock.

The Court: Well, that may be assuming something that isn't in the testimony. [111]

(Testimony of P. H. Ryan.)

Mr. Etter: All right.

Q. You did get a report of it around two o'clock because you were assigned out to investigate the murder car?

A. I heard the call on the air earlier in the evening. We were out in the car.

Q. What time was that?

A. It was after twelve, I don't recall the exact time. That there had been a shooting in the South end. That's all we knew about.

Q. You had been investigating a so-called shooting in the South end?

A. We had not, we——

Q. Shortly after midnight?

A. We were in the opposite end of town then.

Q. You called in. Then did you go——

A. No, we did not.

Mr. Dimmick: Wait a minute. He did not call in.

A. Every car in the city can hear that call.

Q. (By Mr. Etter): That's right. After you received the call, did you call in or did you go into the police station? A. No.

Q. When did you go in?

A. Oh, I don't recall, I couldn't say the exact time.

Q. Well, was it 1:30, was it 2:00, 2:30? Give you a half [112] hour leeway.

A. Could have been either one of them.

Q. All right, assume 2:30.

A. That is assuming. I wouldn't assume because I'm not sure.

(Testimony of P. H. Ryan.)

Q. Well, have you got any idea of approximately the time within a half hour of when you were assigned to the investigation?

A. We were not assigned.

Q. The investigation of the so-called automobile involved in this murder?

A. I wouldn't say that we were actually assigned at any time.

Q. Were you assigned to investigation of the automobile?

A. Yes, we did check that out.

Q. All right, when were you first advised to do that particular job?

A. I believe that that started—the investigation on that started about three o'clock in the morning or 3:30. We had to go get a man from Mercer Island to come over and check his records out, because it was a rental automobile.

Q. Would it be fair, then, Detective Ryan, to assume that from three o'clock on, as you say, until five o'clock, you and Officer Thomas were in and out of the police [113] station on this job?

A. Yes, that is true.

Q. Beg your pardon? A. True.

Q. Now at the police station at that time, you were requested during one of these times that you came in, I assume, to bring Albert Gonzales from his cell, or wherever he was confined at the Central Police Station, into some room for questioning, is that correct?

(Testimony of P. H. Ryan.)

A. We were asked to bring him down from the jail.

Q. From the jail? A. Yes.

Q. Who made that request of you?

A. Sergeant Foster?

Q. Sergeant Foster? A. Right.

Q. Do you recall, that would have been after three o'clock, would it not?

A. I couldn't tell you the time.

Q. Well, I mean you hadn't been assigned, as I gathered, to any part of this case officially until about three o'clock?

A. We weren't assigned to any part of the case at any time; we just assisted, I would say.

Q. When you were in the jail and Sergeant Foster asked you [114] to bring Mr. Gonzales down for questioning, who else was present besides you and Officer Thomas and Sergeant Foster or whoever it was?

A. Well, there was Sergeant Foster and Thomas and myself, and I don't recall if Officers Kirschner and Waite were there present or not. I believe they were, I think they had just come in. They were the original officers on the investigation that night.

Q. Were they Homicide officers?

A. Yes, sir.

Q. Beg your pardon? A. Yes, sir.

Q. I see. Were they assigned to this case, do you know?

A. They made the original investigation at the scene.

(Testimony of P. H. Ryan.)

Q. Beg your pardon?

A. They made the original investigation at the scene.

Q. Original investigation at the scene. Did you continue the investigation of this affair during the rest of that night on Saturday, or the rest of the morning on the 7th, and then the following Saturday?

A. Give the first part of that question again, please.

Q. Did you continue your particular investigation of the automobile that morning, that is, Saturday morning, and during Saturday, the following day? Did you and the other officer have anything to do with that? [115]

A. No, as soon as we found out about the automobile, I believe that that was about the most of the investigation.

Q. All right, when did you arrest Coluya?

A. The following night.

Q. Beg your pardon?

A. The following night.

Q. At what time?

A. I wouldn't recall the time. I believe it was late. I couldn't recall the exact time. There was about five of us went out on that.

Q. I see. In other words, were you instructed by the Homicide Detail to make the arrest, or how did that come about?

A. Well, it is just a pattern up there, if they

(Testimony of P. H. Ryan.)

need more help, anybody that is available, they just go out with them.

Q. And you were called? A. Yes, sir.

Q. All right, now, when, at three o'clock or thereabouts, I assume—you say you don't know the time that you brought this man down?

A. No, sir.

Q. Did both you and Officer Thomas go up to where he was? A. Yes.

Q. Where was he confined? [116]

A. That would be the—I forget what floor that was on. It was in the city jail, it was on the sixth or seventh floor, brought down to the third floor, the Detective Division.

Q. I see. And you both went up, did you?

A. Yes.

Q. Did you put handcuffs on him?

A. No.

Q. I see. And you brought him down where?

A. To Sergeant Foster's office.

Q. To Sergeant Foster's office?

A. Right.

Q. And who was present in Sergeant Foster's office at that time?

A. Like I say, Sergeant Foster was sitting behind the desk, as I recall, but I don't recall if Kirschner and Waite had come in, but it seemed like they had come in from their street investigation.

Q. You don't recall whether they were there or not? A. No, I don't.

(Testimony of P. H. Ryan.)

Q. Beg your pardon?

A. I don't know for sure.

Q. And were you and Thomas both present?

A. We just took him in the office and he sit down and we left. [117]

Q. Didn't you have any discussion with him?

A. None whatsoever. None that I recall.

Q. Did Thomas have any discussion with him?

A. I don't know of any.

Q. Beg your pardon?

A. I don't know of any.

Q. And you left, is that correct?

A. No, we were together all the time.

Q. No, I mean both of you left?

A. Yes, shortly after that we did.

Q. You didn't have any discussion with this man in any office during that period of time?

A. Any what?

Q. You and Sergeant Thomas had no discussion at all with Mr. Gonzales at any time during the time that you went up to the cell and brought him down?

A. No, the only thing that I said to him was up in the jail, "Come down with us."

Q. "Come down with us?"

A. I believe that is the only conversation I ever had with him.

Q. You had no conversation with him in any office on the way down? A. No, sir.

Q. You had no conversation with him in the presence of [118] Sergeant Foster?

(Testimony of P. H. Ryan.)

A. No.

Q. And when you left, as you recall it, Sergeant Foster was there and two other detectives?

A. I am not positive, I couldn't say for sure.

Q. Was Sergeant Foster alone?

A. There was other officers around there, but I don't recall all who was there.

Q. And then you and Officer Thomas left, is that correct?

A. I believe there was a couple of newspaper reporters there, too, I'm not sure.

Q. Did you and Officer Thomas leave at that time?

A. I think we might have went down to the Bureau of Records to check out on some license numbers.

Q. Did you leave the presence of Gonzales?

A. Yes.

Q. All right. When did you see Gonzales again?

A. I have never seen him since the trial.

Q. You have never seen him since?

A. No.

Q. Do you know whether Mr. Thomas has seen him since? A. No.

Q. You say that he didn't, or do you know?

A. I would say that he hasn't seen him.

Q. Beg pardon? [119]

A. I would say he hasn't seen him only at the trial.

Q. Only at the trial? A. Yes.

Q. I see. Detective Ryan, do you know whether

(Testimony of P. H. Ryan.)

or not the Police Department had brought in the detectives that were involved in this case just before Mr. Gonzales was transferred to the County Jail for the purpose of allowing an attorney of his to bring him down to attempt to make identification of some of the officers, or one or two of the officers, who he claimed had assaulted him?

A. I didn't get that question now at all.

Q. Do you recall whether just prior to the time that Gonzales was transferred from the City Jail on Yesler over to the County Jail, whether just about prior to the time he was transferred, whether or not the Seattle Police Department called in a number of the detectives who were involved in this case for the purpose of allowing Mr. Gonzales and his attorney to look them over and allow him, if possible, to identify one or more of the officers who he claimed had assaulted him? Do you remember?

A. I remember of something about it, but I don't know much about it at all.

Q. Do you remember whether or not you were there that day that his attorney, that is, Mr. Gonzales' attorney, came over to the police station to look over the detectives? [120]

A. Gosh, I don't recall.

Q. Do you recall whether you were there or not?

A. I can't recall. There was a lot of detectives there all the time.

Q. Do you recall the day when these people came over to look——

A. No, I don't recall seeing Gonzales again at all.

(Testimony of P. H. Ryan.)

Q. You don't know whether Mr. Thomas was there, either, on that day?

A. No. We usually work together.

Mr. Etter: That is all.

(Witness excused.)

KENNETH W. THOMAS

called and sworn as a witness on behalf of the respondent, was examined and testified as follows:

Direct Examination

Q. (By Mr. Dimmick): Would you state your name to the Court, please?

A. Kenneth W. Thomas.

Q. You are a member of the Seattle Police Department? A. Yes, sir.

Q. And what is your rank in the department?

A. Sergeant of Police.

Q. And what are your duties in the department, your basic [121] assignment in the police department?

A. I have charge of the Safe Investigation Squad in the Detective Division.

Q. You are in charge of the Safe Investigation Squad? A. Yes, sir.

Q. In the Detective Division. Now, then, were you acting in that capacity on January 7th and 8th of 1950? A. I was.

Q. And do you recall on or about January 7th having had something to do with one Albert Gonzales? A. I do.

(Testimony of Kenneth W. Thomas.)

Q. And will you tell the Court what your connection with Albert Gonzales was?

A. My connection was Ryan and I had been working together, Detective Ryan, we were called in to assist in checking out a license on a car which allegedly had been used in this shooting, and in the course of our duties, we were in the office. At that time, Sergeant Paul Foster, who was in charge of the midnight to 8 a.m. shift, was in the office, he was alone in the office at the time answering his phone, and he asked Ryan and I to go up and bring down a man, he said, who had been arrested near the scene of the shooting, a suspect. And so we did and this man was the defendant Gonzales. We brought him down from the jail to Sergeant Foster's office. Sergeant Foster's [122] office in the old building was just back of the counter and visible two directions. It is a small office, seats about four or five persons. And Sergeant Foster began interrogating the defendant Gonzales and I did have the words—I did ask him if he was related to a Freddie Gonzales, a Philippino boy that I had connection with in a prior case, and he stated he was not related. Ryan and I went about our business of checking out this license number of this car.

Q. In other words, you heard the beginning of the interrogation or just the starting of it. Did you hear any questions asked particularly by Foster of Gonzales, or how long were you with Gonzales, let's say?

(Testimony of Kenneth W. Thomas.)

A. Oh, I couldn't say exactly, but we were with him a very short time. It couldn't have been over five minutes at the very most.

The Court: Where was this, Sergeant?

A. Well, that was from the time we took him out of jail, brought him in the elevator down to the Detective Division and into Sergeant Foster's office.

The Court: You did hear part of the interrogation, then?

A. I was there at the very beginning. He just started to interrogate him.

The Court: Was Lieutenant Ryan there too at that time?

A. He could have been. I don't know for sure if he was or [123] not.

The Court: You were together all the time, weren't you?

A. Well, for all practical purposes, yes.

The Court: All right, go ahead.

Q. (By Mr. Dimmick): All right, now, you were sitting back here when Gonzales pointed his finger at you and said that you were the man that beat him up? A. Yes, sir.

Q. Did you ever lay a hand on Gonzales in any way?

A. No, I never threatened, abused him or struck him in any manner.

Q. How many times had you seen Gonzales?

A. I saw him that one night I just related about bringing him down to the interrogation room, Ser-

(Testimony of Kenneth W. Thomas.)

geant Foster's office. I saw him next in court two or three months later, whenever it was.

Q. Have you seen him since that time up to date?

A. No, yesterday, I think, was the next time.

Q. Now your investigation of this business, then, other than having been asked by Foster, whom I understand is connected with Homicide, in bringing Gonzales down to his office, your only other connection was you were either assigned or asked to investigate an automobile in connection with the shooting, this car apparently or allegedly having been used in connection with the shooting? [124]

A. Well, there was another part of the investigation in which we took part, which did lead up to the identity of the driver of the car, or at least one of the occupants, and that was shortly after the shooting when we went out to the South end to help look for these men that had done the shooting. Understand, at the time of the shooting there was quite a furore, hue and cry, a number of cars from all over the city were sent in looking for these three men that done the shooting. We were asked to come in also to check out the car, and so were close by and we decided to watch Rainier Avenue, which was the main arterial leading from where the shooting took place into the city.

Q. You were looking for this car?

A. We were looking for suspects, any Philipinos. The order that came in over the radio was that there were three Philipinos involved in this

(Testimony of Kenneth W. Thomas.)

shooting that had escaped on foot. And at that point, while watching Rainier Avenue, a car drove by south from the shooting, a white man driving the car, a Philipino as a passenger. We stopped the car for investigation, questioned the occupants. The driver was a white man, a soldier who was out of uniform, a man by the name of Larson. He had his identification and a good story. The Philipino's name was Villa.

Q. Was what? [125]

A. V-i-l-l-a. Sonny Villa, he called himself. He was clean, his clothes were not disarranged, he had a good story and the soldier vouched for him. So after taking their names and identification, got the information that the soldier was driving a car owned by William Giron, gave us the address which we wrote down, and we let them go on their way. So then we have to go on, it was probably four hours later when we found out that the soldier we had stopped was the same one who had rented the car used in the shooting.

Q. I don't want to prolong this too long. But, in any event, you, of course, have emphatically denied ever having laid a hand on Albert Gonzales?

A. Absolutely.

Q. Yes. And actually, as far as Gonzales is concerned, you only spent some, oh, five minutes, maybe six minutes, maybe seven, maybe four, the time it took you to bring him from his cell down to Foster's office and turn him over to Foster?

A. That is correct.

(Testimony of Kenneth W. Thomas.)

Mr. Dimmick: That is all.

Cross Examination

Q. (By Mr. Etter): Do you recall what time it was that you brought the [126] petitioner Gonzales from his cell in the Central Seattle Police Station down to Sergeant Foster, or to Mr. Foster, whatever his rank may be, for questioning?

A. No, I can't tell you what the time was. I would guess around two o'clock. It could be two-thirty, I don't know.

Q. Was it before you had made the investigation and had talked to the soldier and the Filipino in this particular car? Was it before that?

A. It was after we had talked to the soldier.

Q. It was after you had talked to the soldier?

A. Yes, sir.

Q. That you brought Gonzales down?

A. Yes, sir.

Q. And you were aware at that time, of course, of the facts that you detailed that you found out by talking to the soldier and talking with the Philippino Villa?

A. Not at that time, we didn't. It was after that.

Q. Beg pardon?

A. Not at that time. They weren't suspects of any kind. All we had was their names.

Q. I see. When you were there in the police station, do you recall who was present at the time you were requested to go up and bring this man down?

(Testimony of Kenneth W. Thomas.)

A. Who was present besides Sergeant Foster?

He was alone in the office. [127]

Q. He was alone in the office?

A. Yes, sir.

Q. Along with you and Sergeant Ryan?

A. Right.

Q. Nobody else there? A. No, sir.

Q. So you went up and got Mr. Gonzales and brought him down? A. Right.

Q. All right, when you brought him down, who was in the office at that time?

A. He was still alone in the office.

Q. He was still alone in the office. And you stayed there for part of the questioning, is that correct? A. No, sir, I did not.

Q. You did not. You left? A. Yes.

Q. Did you hear any queries or any statements made by Gonzales or made by Sergeant Foster while you were there?

A. No, the only question was, after I got there I asked him if he was related to this Freddie Gonzales, and he said no and wanted to know why, or something like that, and just had a few words with him, and then Sergeant Foster started to interrogate him and then Ryan had already left and I went out and joined Ryan and we went about our business. [128]

Q. I see. You and Ryan left Sergeant Foster and Albert Gonzales then in the office?

A. When we left, they were alone.

(Testimony of Kenneth W. Thomas.)

Q. Did you see Officer Seth around that night?

A. No, sir.

Q. You did not. The next day, I assume it was, that you and the officer who just testified, Detective Ryan, arrested Coluya, one of the petitioners, is that correct?

A. Yes, it was the next morning. It was approximately 24 hours later.

Q. That would be on Sunday morning?

A. I can't tell, but it was about 24 hours later. I don't know the days of the week or the dates.

Q. Well, Officer, I'll tell you this, the arrest of Gonzales was made on Saturday morning, early Saturday morning, so would this have been Sunday morning?

A. It would have been Sunday morning, yes, sir.

Q. Beg your pardon?

A. It would have been Sunday morning, yes, sir.

Q. It would have been Sunday morning?

A. Yes, sir.

Q. And between the time that you had brought Gonzales down from the Central Seattle Police Station to have this conversation with Sergeant Foster and the time that you arrested Coluya, can you tell us whether you had any [129] conversation, that is, either you or Detective Ryan or both of you, whether you had had any conversation with Police Officers Seth or Sprinkle or Foster concerning any statements that had been made by Gonzales before you made this arrest of Coluya?

A. Well, just prior to the arrest of Coluya,

(Testimony of Kenneth W. Thomas.)

which was about 24 hours later, either Sprinkle or Seth stopped Ryan or met us in the building and told us that Gonzales had copped out—that is the term for confessed—and named the other two men. They were going to go then to arrest one of the men, Coluya, and wanted us to go along, which we did, but there was no details as to confession or statement.

Q. Who else was with you? Was anybody else with you and Detective Ryan when you arrested Coluya?

A. Yes, there was someone else. I'm not sure who it was, I think it was—I think Sergeant Byrd was there and possibly Sergeant Foster, but I'm not sure. I know there was some other officers with us.

Q. You are not sure. When you talked to these officers—I think you said it was Officer Sprinkle that told you about Gonzales copping out? Is that what you said?

A. No, I said one of them, I don't—

Q. One of the two officers, either Officer Seth or Sprinkle. At that time, did either Officer Seth or Sprinkle tell [130] you that Gonzales had complained that you had punched him or you had bounced him, hit him in the groin, or had assaulted him in any way?

A. No, sir.

Q. Did either one of them mention that to you?

A. No, sir.

Q. Did Officer Seth tell you that he had taken him right after the second statement and taken a

(Testimony of Kenneth W. Thomas.)

picture of him stripped to the waist? Did he tell you that? A. No, sir.

Q. Beg your pardon? A. No, sir.

Q. I see. Do you recall whether or not you were requested to be at the jail upon the request of Gonzales' attorney just before he was transferred to the County Jail to have Gonzales attempt to identify any officer or officers who he claimed had assaulted him? Do you recall that?

A. No, sir, I was not asked. I had heard about it later, some of the officers had been asked to go, but I wasn't.

Q. You heard, did you not, that his attorney and Gonzales had both come over to the police station to try to identify the officer or officers who had beaten him, or he claimed had beaten him, is that correct?

A. At that time I learned he claimed he had been beaten up and they tried to make an identification. [131]

Q. You were not there when they tried to make the identification, is that correct?

A. No, sir.

Q. This man Molina, the deceased, were you acquainted with him? A. No, I never—

Q. Beg your pardon?

A. No, I never saw the man in my life.

Q. You don't know him at all?

A. No, sir.

Q. I see. Had never met him?

A. Not to my knowledge, no.

(Testimony of Kenneth W. Thomas.)

Q. Did Mr. Gonzales ask you, Officer, for the right to call a lawyer? A. No.

Q. Beg your pardon?

A. No, he never asked me.

Q. Did he ask you to let him use the phone to call a lawyer or friend of the Consul in Seattle? Did he ever ask you that? A. No, sir.

Q. Beg your pardon? A. No, sir.

Q. And the only time that you saw him, according to your testimony, is for this brief period of time that you have [132] told us about?

A. Yes.

Q. Is that correct? A. That is correct.

Mr. Etter: That is all.

Mr. Dimmick: That is all.

(Witness excused.)

AUSTIN W. SETH

called and sworn as a witness on behalf of the respondent, was examined and testified as follows:

Direct Examination

Q. (By Mr. Dimmick): You are Austin W. Seth and you are employed by the Seattle Police Department? A. That right.

Q. What is your official capacity?

A. Sergeant in the Homicide and Robbery Detail.

Q. You are a Sergeant in the Homicide and Robbery Detail? A. Yes, sir.

(Testimony of Austin W. Seth.)

Q. Were you acting in that capacity on January 7th, 8th and 9th, 1950? A. Yes, sir.

Q. And did you, in the course of your employment, have occasion to investigate a murder in which the petitioners [133] here were involved?

A. Yes, sir.

Q. All right. Now let me ask you this: You knew during the course of your previous investigation of the matter, I take it, the approximate time that the crime was committed? A. Yes, sir.

Q. And the time that Albert Gonzales was arrested? A. Yes, sir.

Q. And brought in for questioning?

A. Yes, sir.

Q. Now at what stage of the proceedings did you make your appearance?

A. The homicide occurred on the 7th, January 7th, at approximately 12:33 a.m.; the defendant was arrested about an hour later. Detective Sprinkle and myself did not come into this particular case until the evening of the 7th at approximately 10:30 p.m.

Q. In other words, he had been in custody then how long, approximately, at the time you made your initial appearance in the case?

A. Well, around 20 hours, somewhere around there.

Mr. Etter: You mean the evening of the 8th, then, don't you Officer?

A. No, sir, the evening of the 7th. He was arrested on the [134] morning of the 7th.

(Testimony of Austin W. Seth.)

Mr. Etter: I see.

A. My partner and I at that time were working midnight—excuse me—four to midnight shift, and we had gone home at midnight, one-half hour before the homicide occurred, and we did not return to work until 4 p.m. of the 7th, the date of the homicide, and we already were working on a case for several days there and we continued that until approximately 10, 10:30 that evening, when we started on this one.

Q. (By Mr. Dimmick): All right, you say that was approximately 10:30 p.m. of January 7, 1950. Now will you tell us what occurred at that time, what happened?

A. Well, at that particular time, Sergeant Foster asked Detective Sprinkle and I if we would talk to the suspect because of our association with his brother in several previous cases that we had and that we knew Max Gonzales fairly well. We also knew the victim in this particular case.

I say approximately 10:30; it could have been 10 or 11, as far as that goes, we arrived in the station.

We read over all the reports available, and at that time we went upstairs, signed a slip, took the defendant out of his cell where he was placed, and brought him down to the Detective Division. In the Detective [135] Division, we talked to him for probably half an hour or longer.

Q. You and Sprinkle were down there together with him?

A. Yes, sir.

(Testimony of Austin W. Seth.)

Q. Brought him down together. Now I want to ask you specifically: You heard Gonzales testify, I think, that you introduced Gonzales to Sprinkle and said, "Mr. Gonzales, Mr. Sprinkle." Then from then on during the entire period of this questioning, he testified that at no time were you two people together in the room with him; that one of you would go out and the other would come in and question him.

Now, then, is that right or not?

A. No, that is wrong. I would like to explain. The defendant may be somewhat confused about that.

Our wire recording machine is just outside the door, or at that time was just outside the door, and from time to time either Detective Sprinkle or myself would get up and take a look at the machine to see that it was still operating, but that didn't put us further than six feet way at all times. We were otherwise in the room.

Q. Together? A. Yes.

Q. And were you questioning him alternately?

A. Yes.

Q. Or would you take turns questioning him?

A. Alternately.

Q. I mean, you would ask a question and he would answer it and then Sprinkle would ask a question, is that right? A. That is true.

Q. Now did you at any time threaten Albert Gonzales with any type of physical harm or threaten to turn him over to anybody who would commit

(Testimony of Austin W. Seth.)

some bodily harm on him if he didn't confess to having committed this crime?

A. No, sir.

Q. Now let me ask you this: You did say that you had stepped out to check a wire recording that you were making of your conversation with Albert Gonzales here?

A. That is true.

Q. At any time when either you or Sprinkle were checking the recording machine, was anything said in the room that you couldn't hear?

A. No, sir.

Q. You were able to hear all the conversation?

A. At all times, yes, sir.

Q. Did you at any time hear Sprinkle threaten to send Albert Gonzales down to one of the other rooms where some strong-arm boys would beat him up?

A. No, sir. [137]

Q. Now, then, I notice that this confession here signed by the petitioner Gonzales is witnessed by D. R. Sprinkle—here, let me show you—and Sergeant Seth. This thing is witnessed by Sprinkle and yourself. That is the confession that was signed?

A. That is it, sir.

Q. Now, then, you heard Gonzales testify that this confession was taken by Sprinkle and signed by Sprinkle and that is your signature on there also, isn't it?

A. Yes, it is.

Q. Were you present at all times during the time that this confession was taken?

A. I was.

Q. Who wrote the confession?

(Testimony of Austin W. Seth.)

A. Detective Sprinkle.

Q. Detective Sprinkle wrote the statement. And he answered, was it in response to questions that you gave him, or was this just a story that he related to you?

A. In response to a story that he related as we went along. We would occasionally, to clear up matters, ask questions.

Q. And during the whole taking of this thing, you were both present in the room?

A. Yes, sir.

Q. And you recognize this as the confession?

A. Yes, this is Detective Sprinkle's writing. It is his signature and my signature, signed at 2:10 a.m.

Q. On January 8, 1950? A. That's right.

Q. How much time did you spend with Mr. Gonzales here?

A. I would say approximately from 11:30 to 2:15.

Q. From 11:30 to 2:15, approximately two hours and 45 minutes?

A. Somewhere around there, yes, sir.

Q. Let me——

The Court: I didn't get that two hours, 45 minutes?

Mr. Dimmick: From 11:30 p.m. to approximately 2:15 a.m.

Q. Let me ask you this: Was this confession that Gonzales signed here in your presence, was

(Testimony of Austin W. Seth.)

that confession given freely and voluntarily as far as you are concerned? A. Yes, it was.

Q. You told me that some things perhaps happened during the course of the confession that might have induced Gonzales to talk. Would you tell the Court what that was?

A. Would you state that again?

Q. Well, you told me, you recall, in our previous conversation in connection with this case that you may have said something that induced Gonzales to talk. Would you tell [139] the Court about that?

A. Yes, I believe that some—possibly some deceit was used in this extent, that we did know his brother and we did sympathize with the suspect at that time.

Q. You sympathized with him? You mean, "It is too bad that Fidel killed your brother Max?"

A. Yes, that is true. And we said, "Well, maybe he had it coming."

Q. What?

A. And we probably—I believe one of us said, "Well, Fidel probably had it coming."

Q. In other words, if there was any persuasion here, it was a peaceful type of thing by your sympathy for Albert?

Mr. Etter: Slightly leading, and I will object to it.

The Court: Yes, I think it is leading.

Mr. Dimmick: Well, all right. If he can't say it, I will have to say it for him.

(Testimony of Austin W. Seth.)

Q. One more thing. There was a tape recording made of this whole conversation?

A. A wire, sir.

Q. A wire recording? A. Yes, sir.

Mr. Dimmick: Now I have this wire recording here, your Honor. We have a certified copy of an order directing [140] transmittal of the exhibit to the United States District Court, City of Walla Walla, signed by Judge James W. Hodson of the Seattle Superior Court. Wasn't there an affidavit here? Yes. Also, by way of being a statement that the recording contained in this bag is the recording that was used in the trial, in the murder trial in Seattle, at the time he was tried and they used the entire recording of the period in question during the time that Albert Gonzales was being questioned by Detective Sprinkle and Sergeant Seth.

I offer it to the Court for no other reason but to prove that Gonzales is either awfully badly mistaken about some of the things that happened there or else he is not telling the truth, because he testified directly and squarely that these two men at no time questioned him when they were together in the room, only alternately when one or the other was outside. Now this recording, I think, will definitely establish the fact that these men were in the room, and will certainly establish the fact that there was no coercion or force used by these people in eliciting this confession from him.

Mr. Etter: In answer to that, I submit, your Honor, that the matter of his confession and this

(Testimony of Austin W. Seth.)

wire recording are the questions in issue in this hearing, whether they are admissible in a proceeding involving a hearing of this kind before your Honor under the guarantees of the Federal [141] Constitution, and I therefore am going to object to the admissibility of any part of this wire recording until it is first determined whether or not there were trustworthy and voluntary confessions and statements given, both as to the two exhibits that are now in and likewise as to the proffered exhibit of the state.

Mr. Dimmick: We have denied each and every material allegation made by Albert Gonzales. In fact, the very men named in the petition have denied any connection in any way, shape or form. The witness here who was present——

The Court: Just a moment, Mr. Dimmick. I think the Court here isn't trying out the question of the guilt or innocence of these petitioners; that is a question that is present only very incidentally, if at all. The issue before this Court is whether or not their Constitutional rights have been violated in the process of their trial in the state court.

Now I think that the Court should inquire fully into the circumstances of this confession which was allegedly coerced and not given voluntarily. I think the witness here could detail, as nearly as he could remember, what they asked Gonzales, what Mr. Gonzales answered, and that is what is on the tape recording.

If there is no question about the identification

(Testimony of Austin W. Seth.)

of it, I think it should be admitted. Do you propose to play [142] it here or just have it available for use?

Mr. Dimmick: No, sir, I propose to play it. It takes about 35 minutes.

The Court: I think it should be admitted and objection on the part of the petitioners.

Court will recess now for ten minutes.

Mr. Etter: Your Honor, before we conclude, may I inquire on voir dire before the Court rules on the admissibility of this?

The Court: Yes, you should have permission to do that.

Mr. Etter: All right.

The Court: I think we will take a ten minute recess first.

(Whereupon, a short recess was taken.)

The Court: Proceed.

Voir Dire Examination

Q. (By Mr. Etter): Now, Sergeant Seth, this wire recording that was taken during the time, or at least a major portion of the time, that you were questioning Albert Gonzales and during the time that the confession was taken, is this recording here the recording that was taken during this period of time? A. Yes, it is. [143]

Q. Now, how do you know that?

A. Because of my voice. Thursday, last week, along with Judge Hodson, we removed——

Q. Judge Hodson who signed the order?

(Testimony of Austin W. Seth.)

A. Yes, sir, and the presiding judge at the trial—removed this from the—I believe it is the county property room where it was placed by the court. The wire recording was taken away from us at the trial and it had never been returned to us, it has been in the custody of the court ever since. Judge Hodson removed this personally and listened to it.

Q. Were you present at the time?

A. Yes.

Q. When he removed it?

A. Yes, sir. And brought it down to his chambers, listened to it on the wire recorder. He sealed it himself in that envelope, and the legal papers was made out for him and he signed them.

Q. And the recording that was taken from the vault by yourself and Judge Hodson is that recording, and that recording is the one that was made during the questioning period by yourself and Sprinkle?

A. Yes, it is, sir.

Q. Now I gather from your testimony, Officer Seth, that you questioned Petitioner Gonzales from approximately 10:30 [144] until about 2 o'clock?

A. I would say about 10:30 we got him out of jail, somewhere around there.

Q. Until about 2 o'clock? A. Until 2:10.

Q. Now did you or Officer Sprinkle bring him into the particular room where you questioned him?

A. Yes, sir.

Q. You did?

A. I can't recall, I believe both of us together did that, sir.

(Testimony of Austin W. Seth.)

Q. And when had you arranged for the wire recording? I mean, when did you set up the apparatus? Prior to the time you called him in or after?

A. The wire was—we talked to—if I can back-track here, we talked to Albert Gonzales for a few minutes. He had to wait for a short time while we went over the case a little more. He sat out in the main office of the Detective Division. Then we brought him into the interrogation room and all three of us sat down, and at that time we had forgot to put a wire on this and I requested one of the other detectives to put one on and I believe it was Detective Kirshner or Waite that put on a wire. It only took several minutes to do it. But that would be approximately 11, 11:30, that the wire was put on to [145] the machine.

Q. Will you tell me now, did you advise Mr. Gonzales that you were making a wire recording of his statement? A. No.

Q. Beg your pardon? A. No.

Q. You did not? A. No, sir.

Q. Did you at that time advise Mr. Gonzales that any statement he might make would be used against him in the event of a criminal prosecution or during a trial?

A. We didn't advise him of that. We told him he could tell us the story if he wanted to, or he didn't have to.

Q. Or he didn't have to?

A. That is true.

Q. Was that on the recording, that statement?

(Testimony of Austin W. Seth.)

A. Yes, sir.

Q. That is on the recording?

A. Words to that effect. I'm not sure just how it is stated, but I believe you will find that on the recording.

Q. Now during the taking of the wire recording, did you have a discussion with him about his brother's death? A. There was some, yes.

Q. And I noticed here you testified that there was some [146] "deceit," I think you called it, in that you made a statement to him that this fellow Molina probably had it coming to him or some such statement as that.

A. Some statement such as that, yes.

Q. Does that appear on the wire recording?

A. I believe you will find some similar statement on the wire recording.

Q. A similar statement? A. Yes.

Q. And did you have a discussion with him or did you show him a picture of a Philippino who had been killed and talk with him about this picture at the time? A. Yes, that is true.

Q. And is that on the wire recording?

A. No, that was a little before. That was while we were out in the general detective office that I showed him that. I'm fairly certain it was, I don't think you will find that on the wire at all. It was regarding a case in Tacoma, or between Tacoma and Sumaner, no relation to this case at all.

Q. Does any of the preliminary questioning, that is, that you had with him about this case in

(Testimony of Austin W. Seth.)

the detective room prior to the time you took him into this interrogation room, does any of that appear on the wire recording?

A. Well, there is a considerable amount of our discussion [147] about his brother and different things before we start taking the confession from him on the wire here.

Q. In other words, you had a considerable discussion with him about related facts before you started taking it on the wire?

A. No—well, I see what you mean. Out in the Detective Division we talked to him for a few minutes. There is not much more than what is on this wire.

Q. Well, I gather now, though, from what you say that you didn't have the wire put on, I mean you didn't get any of the conversation, until about 11:30?

A. Yes, that is true. But there was very little conversation out in the other room. He was waiting in the presence of other people there and we didn't question him about this case whatsoever.

Q. Well, he had been out in the other room approximately an hour, if you brought him down at 10:30, had he not?

A. Somewhere around there, yes.

Q. What was going on during that hour prior to the time—

A. He was waiting for us while we were looking over the case. We like to know what the case was all about before we started on it.

(Testimony of Austin W. Seth.)

Q. Weren't you talking with him out there?

A. Just about his brother.

Q. Beg pardon? [148]

A. Just about his brother.

Q. I see. Well, actually, the questioning then that you are talking about, that is, so far as the wire recording was concerned, commenced about 11:30 and lasted until about 2?

A. Yes, that's right.

Q. Or about two and a half hours?

A. Somewhere around there.

Q. Is that correct? A. That is true.

Q. And there were alternate questions back and forth by you and by Officer Sprinkle?

A. That is true.

Q. Now, will you tell us, Officer Seth, the wire tape that you have here which you have presented to this Court, is that the total and the complete audible record of two and a half hours of interrogation made by you and Officer Sprinkle of the petitioner Gonzales?

A. I would say lacking about three minutes while the detective put on the wire and we were in the interrogation room just sitting down. I think Detective Sprinkle introduced himself and introduced me to Gonzales, to give him our names, and I don't believe that is on there because a few minutes after it started, he asked, defendant Gonzales asked my name again. I think you [149] will find that on the recording.

Q. Well, then, what I am getting at is a yes

(Testimony of Austin W. Seth.)

or no answer to this question: Aside from what you have mentioned, is the transcription on this wire recording that you are presenting here to the Court, is that the total and the complete audible record of two hours and 45 minutes of interrogation of Mr. Gonzales?

A. Of interrogation, yes.

Q. Well, now, you say "of interrogation?"

A. That is true.

Q. All right, is it the total and complete audible record of the two hours and 45 minutes of interrogation and other discussion of any kind whatsoever carried on in that room for two hours and 45 minutes? A. No.

Q. Beg your pardon? A. No.

Q. Well, was there other discussion at the time carried on in the room?

A. No, it is just, as I explained, that the first two or three minutes is not on the wire, taking him in there and introducing ourselves to the defendant.

Q. Yes, I understand that, but I am excluding that now, I am excluding your introduction, I am trying to get you started from the time—— [150]

A. Yes, I see.

Q. Excluding that. Now I want to ask you if the wire recording that you have here, the transcription on this wire recording that you are offering here to the Court for examination which you have presented here, is that the total and complete audible record of all of the interrogation and all of the discussion of every conversation whatsoever during

(Testimony of Austin W. Seth.)

the two hours and a half that you and Officer Sprinkle had this wire recording on in this room until 2 o'clock? A. No. Can I explain that?

Q. Yes.

A. After talking to the defendant for quite sometime, which is on this wire, I requested him to give a statement to Detective Sprinkle and this, I figured, would take some time so I shut the machine off while Don, or Detective Sprinkle, wrote down the statement. Then we switched it back on while he read the statement to the defendant, handed it to the defendant and had him read it back to us, had him make the changes that he required and sign it. That is on the wire. But that space in there where he actually wrote down the statement, which takes a considerable amount of time, and we had gone over and would go over in the statement, is not on there.

Q. Is that all that is missing? [151]

A. I believe that is all that is missing.

Q. Are you sure that is all that is missing?

A. Yes.

Q. All right, then, your statement is this, that other than the preliminary conversation, that is, when you identified yourselves, other than the time that you turned the machine off for the purpose of Officer Sprinkle writing down the statement, which was read back by the petitioner, other than those two periods of time, it is your testimony that you are presenting here a total and complete audible record of the two hours and 45 minutes of

(Testimony of Austin W. Seth.)

interrogation and other conversations, excluding that which I have inquired about?

A. Yes, I would say so.

Q. You stated that during the time that Officer Sprinkle was writing down or was taking down this confession, that it required some time. Will you tell us why?

A. Well, to write a statement takes a considerable length of time.

Q. Why?

A. In questioning and getting it straight.

Q. Getting it straight?

A. You have to ask the question and then the defendant or the suspect gives his answers, and in putting that on the paper takes a longer time than we used in the actual [152] questioning, probably.

Q. Well, as a matter of fact then, the matter of the statement itself, which I presume is the Exhibit 2—I will ask you to take a look at that and see if that is the statement that you refer to?

A. Yes, that is the one we took.

Q. And during the time you were taking this statement, there were questions and answers, were there not? A. Yes.

Q. And some discussion between you and Officer Sprinkle and Mr. Gonzales? A. That is true.

Q. And none of this appears upon the wire recording, is that correct? A. No, sir.

Q. Beg your pardon? A. No, sir.

Q. Now will you tell me at whose discretion or with whose permission, if any, any of the editing

(Testimony of Austin W. Seth.)

of this particular transcription or any of the deletions in the transcription might have been made?

A. The only deletion, sir, I believe I made myself, and that is turning the wire off during the writing down of the statement. We wouldn't have had enough wire to cover the whole thing. [153]

Q. I see. As a matter of fact, then, it was at your discretion that the wire was turned off and it was your discretion when the wire was turned on?

A. That's right, sir, I did it myself.

Q. And no advice was given to Gonzales of the time you turned the wire off? A. No, sir.

Q. None was given to him of the time that you turned the wire on? A. That is true.

Q. Is that correct? A. That is correct.

Q. And nothing appears upon the wire recorder concerning any of your conversations, your questions or your answers concerning the composition of Exhibit No. 2, which you have examined?

A. That is true.

Q. Is that correct? A. That is correct.

Q. Can you tell us, of the two hours and a half during the time that you had the wire recording machine turned on, Officer, can you tell us what percentage of the time or what part of that time was employed or used in the questioning and answering and discussions having to do with composition of the Petitioners' Exhibit No. 2? [154]

A. I can't tell the exact time on that. This wire only runs for so long. It wouldn't be, certainly

(Testimony of Austin W. Seth.)

wouldn't be, oh, any two and a half hours. I think we have one hour wires and two hour wires.

Q. I see.

A. And, as far as that goes, I don't know which one this is.

Q. I see.

A. And we are instructed how to put them on this machine, how to operate it, and that is all. And I was afraid that we were going to run out of this wire and I wanted the final of Detective Sprinkle reading the statement to the suspect and the suspect reading it back to us.

Q. Well, you say that is about 35 minutes?

A. I believe it is. Probably a little longer than that.

Q. Well, Mr. Seth, can you advise me how the two and a half hours of interrogation, discussion and otherwise, was reduced, or appears to be reduced, to a period of 35 minutes of recording?

A. May I look at this? Like I say, I am not sure just how long this wire is, but the longest period of time, I would say, is in getting this statement down from the suspect.

Q. I see.

A. We talked for awhile—that is on the wire—shut it off, [155] got the statement down, and then turned the machine back on and he gave us—that is, we go back over the statement at that time.

Q. This wire, however, is a recording, is it not, of only 35 minutes of the actual audible record of

(Testimony of Austin W. Seth.)

the two hours and 45 minutes of interrogation and discussion, excepting only the introduction and this discussion you had about Exhibit No. 2?

A. Yes, I believe so.

Q. Is that correct? A. Yes.

Q. So that, assuming you commenced at 11:30, as you have stated, there are approximately two hours of occurrences and discussion and happenings in that particular interrogation room that are not recorded on this wire recording; am I correct?

A. If we started at 11:30, I believe the first half hour to 45 minutes would be on the wire.

Q. On the wire?

A. Yes. Then the lapse of time would be on, and then the last 15, 20 minutes will be on the wire, probably.

Q. The last 10, 15 or 20 minutes?

A. Yes, that is true.

Q. So in all, there can't be over a total of 40 or 45 minutes on that wire, is that correct? [156]

A. No, there will not be.

Q. Is that right? A. That is true.

Q. So that there is approximately an hour and a half or an hour and three-quarters of conversation, interrogation and discussion, starting at 11:30 and finishing at 2 o'clock, which is not on this particular wire recording; is that correct?

A. Yes, I would say it takes about an hour to an hour and a half to take that statement that we have.

Q. And that is because of the discussion you

(Testimony of Austin W. Seth.)

had concerning the statement, isn't that right, with Gonzales?

A. Yes, as he was going along taking the statement.

Q. And the elements that make up the confession, is that correct? A. That is true.

Q. And there were questions and answers back and forth during that period of approximately an hour and a half; isn't that right? A. Yes.

Q. And that is not on the wire recorder?

A. That is true.

Q. But it has to do with this particular case and with this particular alleged murder, is that right? A. Yes. [157]

Q. And it was within your power and you exercised the discretion to turn the wire on and off during that period of time? A. I did.

Q. Is that right? A. I did.

Q. So that this transcription that you are presenting here is not the total and the complete audible record of the two hours and a half of questioning, answering and inquiry into this particular case that you had with the petitioner Gonzales between the hours of 11:30 and 2 o'clock on the 7th day—let's see—August, I guess it is, 1950?

A. January.

Q. Pardon me, the first month, 1950.

A. Starting the 7th. The interrogation started on the 7th and would finish up on the 8th.

Q. That's correct. A. Yes.

Q. But I mean this is not, then, the total——

(Testimony of Austin W. Seth.)

A. No.

Q. —audible recording of that questioning period from 11:30 until 2 o'clock, is it?

A. That is true, it is not.

Mr. Etter: That is all, and I am going to object to [158] the admission of the exhibit on the same basis, your Honor, that I will object to a written instrument or part of a confession, on the ground that it obviously appears that the greater percentage of the conversation, questions and answers having to do with the alleged confession which was used for the purpose of conviction and which we claim was coerced, does not appear, nor any part of the preliminary conversation having to do with this same subject as this wire recording; on the further ground that the exercise of discretion and permission in taking that which the particular authorities wanted on the recording machine was taken and eliminating that which was not wanted. It is not a complete transcript or wire recording of the entire confession or of the entire conversation, period of time, having to do with the material elements of this during the period from 11:30 to 2 o'clock on the date in question.

The Court: I think the matters that have been brought out on cross examination go to the weight that should be given to the recording. It should be considered in the light of the disclosure here that it doesn't cover the entire conversation, but I don't think that it bars its admissibility so far as it goes.

(Testimony of Austin W. Seth.)

The Court will admit it and the record will show the objection of the petitioners.

As a practical matter here, I was just wondering [159] what is the best way to get this recording in the record. I don't think the Court of Appeals has any facilities to play the tape.

Mr. Dimmick: Your Honor, we have a transcript here of the record as it is played and the problem, of course, is for the reporter to identify the people who are talking, and this, of course, does identify those people. I think the voice of Gonzales is certainly distinguishable, and Seth has a rather deep voice and I understand Officer Sprinkle has a higher voice.

The Court: Well, your recording is on a tape here, isn't it?

The Witness: A wire.

The Court: Oh, a wire?

The Witness: Yes, sir.

The Court: Rather than put the wire physically in evidence as an exhibit, why not play it in the record as we would read a deposition into the record, be taken by the reporter. Would you have any objection to that, Mr. Etter, if a transcript were furnished to the reporter for his use and guidance when he goes to make up his transcript, if he does have to?

Mr. Etter: I have no objection to that, your Honor.

The Court: I don't think the transcript should be substituted, but it would be helpful to the re-

(Testimony of Austin W. Seth.)

porter if it is [160] left with him. He can use it as a guide and as a help.

Mr. Etter: That is correct.

The Court: Are there any further questions of Officer Seth?

Mr. Dimmick: Yes, your Honor, after the record, I do have some.

The Court: All right.

Mr. Etter: Oh, before they start playing that, one or two questions, your Honor, if I may.

The Court: Yes, all right.

Q. (By Mr. Etter): When you were talking with Mr. Gonzales prior to the time that you took the wire recording, will you tell us whether or not at that time he requested of you that he be allowed to call counsel, call his lawyer?

A. I believe that during the time of making his statement, he requested—yes, I recall now, we made three or four attempts to get hold of the lawyer he called for. I believe you can verify that by the attorney himself, a Mr. Vertres, he requested at that time. His attorney during the trial was a Mr. Freeley, but at the time he requested a Mr. Vertres. Detective Sprinkle called, I called, and I believe the defendant himself called the number to get hold of Mr. Vertres.

Q. When was that, when you came on at 10:30?

A. I can't give the exact time, sir. I know that we got [161] hold of Mr. Vertres and I don't know if the defendant talked to him or not. I know I talked to him, and I believe I got hold of him

(Testimony of Austin W. Seth.)

about, oh, 2:30 in the morning. I'm not sure about that, but we had called several times during the evening, or evening and morning.

Q. I see. During the time that you were talking to him and prior to the time you took this tape recording, did Mr. Gonzales complain to you that he had been abused while he had been in the police station?

A. Not while we were in the interrogation room and not to me. Now he may have requested or told Detective Sprinkle this prior to going into the interrogation room while we were out in the main office. The first I heard of this was on the 9th, and at that time I immediately requested he be taken to the 4th floor of the police station, which was a city hospital, and given an examination. We have **the doctor's** statement and who failed to find any marks, any evidence——

Mr. Etter: Just a minute. I will object to any doctor's statement at all.

A. All right, sir.

Mr. Etter: Unless he is here.

A. And I took pictures.

Q. You took pictures? A. Yes. [162]

Q. When did you take pictures?

A. That was either the 8th or 9th, I'm not sure. It was as soon as the defendant told us that he had been beaten.

Q. When did he tell you that?

A. The first I knew of it—I'm not too sure about this—I believe it was the 9th. It could have

(Testimony of Austin W. Seth.)

been the evening of the 8th, because we started on this case on the evening of the 7th and I believe it was the next day, so it is probably the 8th.

Q. It was probably the 8th?

A. Probably, yes.

Q. That you heard about it?

A. Yes.

Q. And he had never said anything about it until that time?

A. Not to me, personally.

Q. Did he say it to Sprinkle that you know?

A. Not that I know.

Q. How did you say he might have said it to Officer Sprinkle?

A. Not in my presence, but he could have said something. I don't believe he did because Don, or Detective Sprinkle, would have let me know.

Q. He didn't say anything to you about it?

A. No, sir, he did not.

Q. And you say that Mr. Gonzales hadn't said anything to you [163] about it?

A. Not to me, personally, no.

Q. Had you been informed that he had been in custody since the morning of the 7th, that is, early Saturday morning?

A. When we started on the case?

Q. Yes? A. Yes, I knew that.

Q. You had been advised of that?

A. Yes.

Q. And can you tell me whether or not there

(Testimony of Austin W. Seth.)

was at that time a police court in the old central city police station?

A. Yes—wait a minute—that would be on a Saturday. I am a little confused on my dates here. What would be the 7th?

Q. 5 a.m., January 7th, that would be Saturday morning, January 7th.

A. That is on the 7th.

Q. There was a police court, was there not, in the old Seattle central police station?

A. There was a police court in the station and I'm not too sure whether the session is on Saturday there or not. I don't believe there is a police court session on Saturday.

Q. You made no inquiry? [164]

A. No, I did not.

Mr. Etter: I see. That is all, your Honor, on voir dire.

Mr. Dimmick: I would like to reserve any further examination at this time.

The Court: All right, you may continue interrogation after you put this on. Will you operate the machine then, Sergeant?

The Witness: Yes, sir.

(Whereupon, the aforementioned wire recording was played by the witness, of which the following is a literal transcription:) [165]

Transcript of Wire Recording

Gonzales: Of course, in my case, I know I am in a rough spot. When you are in a rough, tough spot

(Testimony of Austin W. Seth.)

like that, it is best to keep away. I mean, you're bound to, you know, in that case.

Seth: You want to protect these other people because of their families. Like Giron?

Gonzales: Giron.

Sprinkle: Giron can't get out of it. We've got the proof on him. See, he bought the guns, we got the proof on that.

Gonzales: You see, I have sympathy for those kids. Especially the other fellow, his wife is going to have another baby.

Seth: That is Cecil?

Gonzales: Yes.

Seth: Uh huh.

Gonzales: I am coming up to the front now. Giron he has got four kids.

Seth: Yes, he has four children.

Gonzales: Of course—of course, when I talked to them, they have a grudge for a long time on him.

Seth: Oh, they didn't like Fidel, either? [166]

Gonzales: They have a grudge on him years and years ago, have trouble in his joint.

Seth: Yes.

Gonzales: And, of course, these people have a grudge, too. If they didn't have a grudge, they wouldn't be in it. But because they have a grudge and they have trouble, and, of course, we hate—because of my nieces and nephews living the way they are—we hate to see Fidel live the way he is.

Sprinkle: Oh, I can see that, too. I felt really sorry for your sister-in-law over there at the Coroner's inquest, because it looked to me like, you

(Testimony of Austin W. Seth.)

know, it was a pretty fixed up deal as far as the witnesses were concerned. We didn't have no witnesses for the other side. Even our testimony, we had to testify to what we saw and what these people told us.

Gonzales: I got—I got about four witnesses already that were down there, but they called them up and told them not to do anything and threatened them if they do witness for him. [167]

Sprinkle: That's what makes it tough on us. As far as that is concerned, Fidel got—

Gonzales: And this boy, they are afraid to do that because they are afraid Fidel could do that because they don't got any money.

Sprinkle: Yes.

Gonzales: Because—

Sprinkle: Well, that can all be brought out in the trial, you know.

Seth: How much are these people involved then, Cecil and Giron? Are they—

Gonzales: Mr.—what is your name?

Seth: I am Sergeant Seth.

Gonzales: Well, of course, I will come to the clear now because I don't want to have any more beef. I've had enough now. I could make another statement, but you could break it down.

Seth: This statement here—

Sprinkle: What we want to do, Albert, is just state you now wish to make another statement; that the first one that you gave us was not true.

Gonzales: Because this might be against me, yes.

(Testimony of Austin W. Seth.)

Sprinkle: Yes, we want the truth. We're not going [168] to hold that against you. If you'll cooperate with us, we're not going to hold that statement against you.

Gonzales: But one thing—one thing I would like to ask, Sergeant, about those involved, you know, if possible——

Seth: Those involved?

Gonzales: Yes.

Sprinkle: Well, you'll help them by telling the truth, too.

Seth: You know, Albert, they are involved in this now, aren't they? Whether they had the major part of it or you did the job, it all depends on the statement you give us, whether it's true or not, see. If you clear them, why then they're out of it, you see.

Sprinkle: Tell us the exact truth, just the way it happened, and then let us decide who is to blame and let the court decide the punishment to each person. But I will say this, that each one of these people that tells us the exact truth, we will give an absolute 100 per cent recommendation.

Gonzales: But you can see down here out of my statement that I am protecting the other sides, too.

Seth: That's right.

Sprinkle: We realize that.

Gonzales: Because all these people have families. Like myself now, I went to visit my nephews just the other night before I went down there and gave them a good kiss and it just hurt inside of me.

(Testimony of Austin W. Seth.)

Sprinkle: That's right, I can see why that would happen, too.

Gonzales: I helped them a lot because their relief is not enough now.

Sprinkle: Yes. How long have you known the Girons?

Gonzales: Oh, not very long. I guess only about a couple of months.

Seth: How about Cecil?

Gonzales: Oh, Cecil, since '47. We went to Alaska.

Seth: Cecil worked out to the golf course out there?

Gonzales: Yes.

Sprinkle: Out at the Olympic. Well, I think what you should do, Albert, is go ahead and give us a statement, the exact truth, [170] how much each person is involved, and then we will get these people in and we will talk to them and get their statement and get them to tell the truth. They'll figure if you told the truth, they'll tell the truth, and that way it will look like you guys are trying to do the right thing; that you were afraid of him and that he left your sister-in-law a widow with three kids that are starving, aren't getting enough help from the relief, while he is driving around in a big Cadillac, has lots of money. But we certainly can't help if you don't tell us the truth.

Seth: Also, Albert, that he has threatened you. How many times has he threatened you?

Gonzales: Well, according to the boys, they al-

(Testimony of Austin W. Seth.)

ways tell me to watch out because he got a watch out for me all the time—I mean lookout for me all the time—because he figured if he don't get you, you might get him some of these days.

Seth: And you figured you better get him before [171] he got you?

Gonzales: I had to get him, sir.

Seth: You had to get him.

Sprinkle: Well, I think that is a good defense, Albert.

Gonzales: If he gets me, I got a lot of people lost.

Sprinkle: That's right.

Gonzales: If I got him, he got nothing to lose, he got a lot of money.

Sprinkle: That's right, his wife will get a lot of money.

Gonzales: I've been helping out before. I never have any record, I never have any squabble.

Sprinkle: That will go good for you.

Gonzales: I never had no trouble with anybody. Where I work I always have a good record.

Seth: Were you in town when your brother was killed?

Gonzales: Yes, I was in the house there, taking a bath.

Seth: Oh, you were here then?

Gonzales: I was here, but when I went down there, was all said and done. [172]

Seth: When did you start planning this?

Gonzales: Well, I started planning this about

(Testimony of Austin W. Seth.)

three months ago, because they had been following me.

Seth: Oh, they were following you at that time?

Gonzales: I know they had been following me, because himself following me. He followed me down Third and Yesler. I went to the grocery down there. His car was in the middle of the road, was parked in the middle of the road. I saw him and he saw me. But, of course, I didn't carry any gun with me. I didn't want to carry a gun because he suspicious of me I have a gun.

Seth: Yes.

Gonzales: But I know he always has a gun, because he was holding that—what you call that—the wheel like that, sitting like that, and his other hand like that. But I don't want to take a chance of going and say hello. I wanted to talk to him but I don't want—he has his hand inside of his pocket.

Seth: How long ago was this, Albert? [173]

Gonzales: A month—I think that was around between—I think that was around the 22nd of December.

Seth: Well, last night now, how long have these other fellows, have you taken them in with you on this deal?

Gonzales: Well—

Seth: They were afraid of him, too, you say?

Gonzales: Yes, they're afraid.

Seth: Has he threatened them?

Gonzales: Well, yes, they know that already. Any fellow that goes at my side, Fidel, some of his

(Testimony of Austin W. Seth.)

followers, will see, Fidel will have some of his followers talk to them. They will talk to them. That is why some of the fellows won't go around with me. I don't want them to go around with me because I don't want them to get suspicious.

Seth: They are afraid to go with us because they will get Fidel mad at them and he threatens them then. Now how was this planned last night? Did you plan it or did the others plan it with you?

Gonzales: Well, that Giron—Sergeant, you found [174] out that he rented a car?

Seth: Larson rented the car.

Gonzales: Larson?

Seth: Yes, Mrs. Giron and Larson rented the car. Do you know Larson?

Gonzales: White boy?

Seth: White boy.

Gonzales: Yes, I met the fellow once.

Seth: They rented the car.

Sprinkle: Mrs. Giron gave him the money, a hundred dollar bill.

Gonzales: Did she say that?

Seth: Yes.

Sprinkle: Yes.

Gonzales: Because I want you to tell me the truth about it.

Seth: Mrs. Giron went down with him and together they didn't have any money but a hundred dollar bill. She had the money, but they rented it in his name. He is a soldier at Fort Lewis out here. You say you have met him?

(Testimony of Austin W. Seth.)

Gonzales: Just once.

Seth: Yes. And they rented the car and then they brought it up there and you traded [175] cars, is that right?

Gonzales: What did Bill say—his name, this Larson, what did he say about the car?

Seth: Well, he said that Giron wanted to use it because it was smaller. He wanted to drive a smaller car last night.

Gonzales: Oh.

Seth: You see.

Gonzales: Well, that was a little bit suspicious.

Seth: Yes.

Gonzales: It happened that the car was stuck down there.

Seth: Uh huh.

Sprinkle: Well, you got up on the hill, didn't you, got up on the ice, didn't you, or slid into another car, didn't you?

Gonzales: Yes, he did. Then the car was stopped.

Seth: Who was driving it, Bill or you?

Gonzales: The other fellow.

Seth: Bill was driving it?

Gonzales: Yes. I don't know how to drive, sir. We stopped about a couple of blocks from the streetcar—I mean the bus. They didn't even run the motor any more because it stopped around there. So I [176] said, "How can we get back from here?" Then I said we had to change our plan. Of course, that is our plan then. I'm just telling you the truth now.

(Testimony of Austin W. Seth.)

Sprinkle: Glad to hear it.

Gonzales: I said we might as well cancel now because, see, this is bad luck because Fidel always has somebody with him all the time. And sometimes it is Philippino boys with him, sometimes Philip-pino boys drive the car. Sometimes they are in front—I mean sometimes they are behind Fidel—all the time.

Seth: Body guards?

Gonzales: Body guards, yes. And then the ones in his car, because we see him all the time. And then we says—well, then Giron or Cecil said something about, “Fidel must have a—” I don’t remember it too well—something about, “Fidel must have a gun with him and we don’t want to be caught sleeping.”

Seth: Now, back to this—who provided the guns? Were any of those guns yours? How about the rifle, the 30-30. One of [177] the guns Giron bought. We know that.

Gonzales: Do you know that?

Seth: Yes, one of the shotguns.

Gonzales: What, the double barrel?

Seth: I think it was a single shot, I’m not sure.

I haven’t looked over the statement yet.

Sprinkle: Who had the 30-30 rifle?

Gonzales: Well, I’ll tell you, that is me.

Sprinkle: That’s you, you had the 30-30?

Gonzales: It was my brother’s.

Seth: That’s Max’s?

Gonzales: Uh huh.

(Testimony of Austin W. Seth.)

Seth: And you are the one that used it?

Gonzales: That's a good question.

Sprinkle: Kind of tough to admit it, I know, Max—or Al—but I think you will find you will feel a lot better when we get this thing straightened away.

Gonzales: I couldn't do much to defend them because I am scared.

Sprinkle: Yes.

Seth: Did any of the others fire any shots, or just you, Albert?

Gonzales: We both fired. [178]

Seth: And Giron, you mean?

Gonzales: Giron, no, he didn't.

Sprinkle: Giron was driving?

Gonzales: He cannot fire, he was driving.

Seth: How about Larson? Was it Larson that fired or Cecil?

Sprinkle: Larson was with him? No, he wasn't with him. Who was the fourth man? Just the three of them?

Seth: Just the three of them.

Sprinkle: That is what I thought.

Gonzales: That's right, Sergeant Seth. I told the boys to get him to stay home because, well, he is going to get married soon.

Seth: Yes, but he knew about it? Larson knew about it?

Gonzales: Did he tell you about it?

Seth: He knew a little bit, not much. You kept quite a bit of it secret from him, didn't you?

(Testimony of Austin W. Seth.)

Gonzales: Well, he promised me that if I wanted him to go, he will do it just for me. Well, I told him about how my brother left the kids and this and that.

Seth: He is marrying this Evelyn, isn't he?

Gonzales: No, Shirley, from the other—Wisconsin.

Seth: Oh, Shirley?

Gonzales: Uh huh. So I told him, Bill, not to go, not to butt in, because that is not his business, anyway. Because, after all, I told him, he is going to get married pretty soon. I said, "Don't go yourself because—you don't have to go yourself."

Seth: Now how did you—did you wait there for Fidel to come home?

Gonzales: Yes.

Seth: When he came home, was he alone?

Gonzales: He happened to be alone at the time. It was the first time.

Sprinkle: Had you been out there before, Albert, waiting for him before?

Gonzales: Well, yes.

Sprinkle: Well, here's the thing—

Gonzales: Well, I want you to get me the straight. I don't want you to get mad at me.

Sprinkle: We're not going to get mad at you, and we want you to realize you have the right, you know, to tell your story or not to [180] tell your story. That's it, right?

Gonzales: I was interested in this, but—well, I think you seem to have a little understanding, I

(Testimony of Austin W. Seth.)

mean good understanding of me, and I have to rely, because I don't want to go around the bushes any more. I know you will find out anyway.

Seth: You had the rifle, Cecil had the shotgun, is that right?

Sprinkle: You want a drink or a smoke or anything?

Gonzales: No, thank you.

Sprinkle: You don't smoke?

Gonzales: I don't smoke.

Seth: You both fired. What would you have done if anybody had been there with him? Would you have shot it out anyway?

Gonzales: Well, if we see he is Philippino, we will get him, but if he is an American, we don't want to become—because he had an American fellow, but we didn't get him.

Seth: If there had been a Philippino boy there, you would have to kill him along with him, is that right?

Gonzales: Because we don't want to be complicated [181] with a white fellow.

Seth: Yes. How many shots do you think you fired yourself?

Gonzales: I know I fired only once. I know that I got him.

Seth: You know you got him with that one shot?

Gonzales: Yes.

Seth: How many times did Cecil fire?

Gonzales: I think just once, I guess.

(Testimony of Austin W. Seth.)

Seth: Just one?

Gonzales: Yes, because once I fired, I fired in the car.

Seth: Did Fidel fire any back?

Gonzales: I think he did.

Seth: You think he fired back at you?

Gonzales: Yes, I think he did, because Cecil mentioned, "I'm hit."

Seth: Cecil did, said, "I'm hit." What time was it about that Fidel came home?

Gonzales: I think is around 12:20, I guess.

Seth: About 12:20. And you were out there waiting at that time and you seen that he was alone. That's fine. Now what did you do, or what did Fidel do? Did he fall [182] to the ground or was he in his car?

Gonzales: He was in his car, he didn't fall to the ground.

Seth: He didn't fall to the ground?

Gonzales: He was in—I thought he was not hit, he was driving all along. He was driving all along to practically in front of his garage and I knew he was not hit, though I think, I don't know.

Seth: Were you in the car when you shot at him?

Gonzales: Yes.

Seth: And was the car moving?

Gonzales: Yes.

Seth: And then what happened after you did the shooting?

Gonzales: You mean when we shot him?

(Testimony of Austin W. Seth.)

Seth: Yes.

Gonzales: Well, when I shot him, his car, he was running his car the way—just like driving like he was not hit.

Seth: It kept going?

Gonzales: It kept going, just like he was not hit at all. And I think he shot, he back shot at us once or twice. [183]

Seth: You kept going, is that right?

Gonzales: That is right.

Seth: Bill kept driving the car?

Gonzales: Well, the car was stuck already.

Seth: And then you got stuck there?

Gonzales: And then I was so excited when I was going to have my second shot, it almost got me here.

Seth: You pulled the trigger when you—

Gonzales: I—yes, I almost got me.

Seth: You almost shot yourself?

Gonzales: I was so scared. That is because I hold this gun.

Seth: Now did you split up and run, or what happened then?

Gonzales: Well, of course, we run.

Sprinkle: Did you stay together or split up?

Gonzales: Oh, we split up.

Seth: What did you do with your gun?

Gonzales: Well, we threw it somewheres.

Seth: You threw it in the bushes there?

Gonzales: That's right.

Seth: Do you know what the other fellows did with the gun, the shotgun?

(Testimony of Austin W. Seth.)

Gonzales: No, I don't know, sir. [184]

Sprinkle: You haven't seen the other fellows since then?

Gonzales: Oh, no. I am delighted because I was numb. In a minute I was numb. I cannot move, you understand, I was so scared. You don't understand, you have been down there, why I was so scared.

Seth: You say this gun that you used was your brother's gun?

Gonzales: Well, I had been keeping that gun ever since.

Seth: Oh, ever since the murder, he was killed?

Gonzales: I didn't practice yet because there is no place to go around to practice.

Seth: How many shells did you take with you out there?

Gonzales: I got the box, let's see, about 12, 14 shells.

Seth: How far away was you, Albert, when you shot at Fidel?

Gonzales: Oh, I think about this near. Of course, anybody that he don't know how to shoot a gun, it is impossible to judge.

Seth: Yes. How many feet would you say you [185] were away from Fidel?

Gonzales: About five.

Seth: Five feet away.

Gonzales: Yes.

Seth: His car drove that close to you?

Gonzales: Yes. He was this close to us. We was afraid that he might shoot us first.

(Testimony of Austin W. Seth.)

Sprinkle: Did he see you or recognize you or anything?

Gonzales: No, no.

Seth: You were only about five feet away from him?

Gonzales: That's right.

Seth: Then after that was all through, you say you split up and ran?

Gonzales: Yes, sir.

Seth: Your hands there, they have scratches on them. You got that from running through the bushes?

Gonzales: Oh, yes, we went around the bushes all the way through down there. I did know when I run this way the Prentice Avenue is only about block and a half. I was afraid because Prentice is the place where I walked right at the moment.

Seth: Then you caught a taxicab, is that right?

Gonzales: Yes, I did.

Seth: How far was that from where the shooting took place that you caught the cab? Just a guess?

Gonzales: Oh, I think about—about ten blocks, I guess. Of course, ten blocks I ran, close to a mile down there.

Seth: Now, Albert, will you give Detective Sprinkle here a statement? You just state that you wish to change your statement that you give on this original statement; that you gave this statement here to protect your friends; that, as you say, you

(Testimony of Austin W. Seth.)

weren't looking out for yourself, you were looking out for your friends; is that right?

Gonzales: Yes.

Seth: All right, Detective Sprinkle here will have to make out a new statement, and stay as close to the truth as you can, just as you recall what happened.

Gonzales: Im telling you the truth now.

Seth: Yes, we realize that, Albert. [187]

Gonzales: I cannot lie any more.

Seth: That's right.

Gonzales: If I lie now, then I will have to face it now.

Seth: That's right, that's right. I think you will feel a lot better off now that you're giving us the whole truth.

Gonzales: But one good thing about this case— I mean I——

Sprinkle: I, Albert Ayson Gonzales, now wish to change my original statement given to the police detectives when I was first arrested.

I have been afraid of Fidel Molina for some-time. Ever since he killed my brother last June. He has threatened to kill me several times. I have moved several times since June because I was afraid of Fidel Molina.

On December 22, 1949, I saw Fidel in his car. He had his hands on the wheel and when he saw me he put his hand inside his coat. I knew he carried a gun in a shoulder holster. I left immediately as I thought sure he was trying to get me. [188]

(Testimony of Austin W. Seth.)

I had to be careful of my friends because I knew Fidel would take it out on them if he knew they were friends of mine. People kept telling me I was in danger and I realized I would have to get Fidel before he got me. He kept forcing me to move and come into the open. I have been followed when I was on the street.

Two men I know, Bill Giron and Cecil Coluya, were also afraid that Fidel was after them, and they were also friends of my brother's. We talked it over and decided to band ourselves together against him. We figured it was either him or us.

Friday night, January 6th, Giron, Coluya and myself went out to Fidel's house in Rainier Valley. We went out in a rented car with Bill Giron driving. I was in front with Bill and Cecil Coluya was in the back seat. We had a 30-30 rifle and two shotguns with us. The 30-30 rifle belonged to my brother Max and I have had it since he was killed. One shotgun I have had for a long time and Giron had another shotgun. [189]

We arrived at Fidel's about five minutes after twelve midnight. We stopped about five blocks away from Fidel's house. We waited about ten or fifteen minutes and Fidel drove by us and we followed him in our car. We drove alongside of him and as we got even with him, I fired twice at Fidel with the 30-30 rifle and Cecil shot once with the shotgun. We drove on and Fidel's car came to a stop as if nothing had happened. I heard a shot. I knew he was shooting at us. Our car had stalled and Giron

(Testimony of Austin W. Seth.)

couldn't get it going. I stepped out of the car and stood in the middle of the street and emptied the rifle into—well, I got the “car,” but I think it should be into——

Seth: “His car.”

Sprinkle: Fidel's car. I then ran because I was afraid Fidel might have someone in his house to help him. I ran through some heavy brush, leaving the rifle in the brush. I came out on a paved street and hailed a cab. I was in the cab when the [190] police got me, or, rather, the cab stopped and turned me over to the police.

The reason I did not tell this true story when I was first arrested was because I was confused and wanted to protect my friends. After thinking the matter over and discussing it with the detectives, I decided that the truth was the best solution.

I have read the foregoing three and a half pages and find them to be a true statement given by myself to Detectives Don Sprinkle and Austin Seth, without promise or duress. I have read the foregoing three and a half pages.

All right, now, Albert, I wish you would read that over and anything you don't understand or anything you don't want in there or anything, just let us know. Just read it out aloud.

Gonzales: I, Albert Ayson Gonzales, now wish to change my original statement to the police detectives when I was first arrested.

I have been afraid of Fidel Molina [191] for sometime. Ever since he killed my brother last

(Testimony of Austin W. Seth.)

June. He has threatened to kill me several times. I have moved several times since June because I was afraid of Fidel Molina.

On December 22, 1949, I saw Fidel in his car. He had his hands on the wheel and when he saw me he put his hand inside his coat. I knew he carried a gun in a shoulder holster. I left immediately as I thought sure he was trying to get me.

I had to be careful of my friends because I knew Fidel would take it out on them if he knew they were friends of mine. People kept telling me I was in danger and I realized I would have to get Fidel before he got me. He kept forcing me to move and come into the open. I have been followed when I was on the street.

Two men I know, Bill Giron and Cecil—Cecil, this is Cecil.

Sprinkle: What was that?

Gonzales: Cecil.

Sprinkle: Oh, Cecil? What have I got?

Gonzales: C-e-c-i. [192]

Sprinkle: Oh, okay.

Gonzales: (Continuing) —was also afraid that Fidel was after them and they were also friends—Sergeant, we should mention that Fidel was after them and they were also—Sergeant, we should mention that the ones we went out with were Cecil and Giron and some of Peter's friends, so us were together.

Sprinkle: Oh, I see. Well, we can add that on the bottom somewhere after you get through there.

(Testimony of Austin W. Seth.)

Go ahead and read it and then we will add it on the bottom.

Gonzales: (Continuing) —also friends of my brother's, because friends of my brother where I got too much course.

Sprinkle: Yes.

Gonzales: They, too, are going together, we should go in together.

Sprinkle: Oh, all right. We'll put that at the end of the statement.

Gonzales: (Continuing) We talked it over and decided to band ourselves together against him. We figured it was either him or us. [193]

Friday night, January 6th, Giron, Coluya and myself went out to Fidel's house in Rainier Valley. We went out in a rented car with Bill Giron driving. I was in front with Bill and Cecil Coluya was in the back seat. We had a 30-30 rifle and two shotguns with us.

Can I change this, too?

Sprinkle: Yes, fine, change anything you want.

Gonzales: Okay.

Seth: That's fine.

Gonzales: (Continuing) The 30-30 rifle belonged to my brother Max and I have had it since he was killed. One shotgun I have had for a long time and Giron had another shotgun.

Well, he didn't got that. I don't know whether he owned that one or not. Did you say something that Giron had got one?

Seth: Yes, yes, he bought it.

(Testimony of Austin W. Seth.)

Gonzales: Oh.

Sprinkle: Well, you don't know where he got it?

Gonzales: No.

Sprinkle: How did you know the gun got in the car? [194] You didn't bring it, did you?

Gonzales: No.

Sprinkle: Cecil didn't bring it?

Gonzales: And did you find out that Bill—I mean Giron—bought that gun?

Seth: He bought it in a hock shop downtown.

Gonzales: Oh, he did?

Seth: That's the information we have.

Sprinkle: Of course, if you don't want to put that in there, we'll just cross it out. Because if you don't know—I thought you knew—we don't want to put in anything that you don't know, see. So we'll just say that—let's see—"one shotgun I had a long time," and then we'll cross out this. "I don't know where the other one came from." How's that?

Gonzales: That is all right. Then you can ask them where they got it, because I don't want them to think I was trying to spill something on them.

Sprinkle: Yes. Well, you read that over there, then, where I marked it out.

Gonzales: One I had a long time and I don't know where the other one came from. [195]

We arrived at Fidel's house about five minutes after twelve midnight. We stopped about five blocks away from Fidel's house. We waited about ten or fifteen minutes and Fidel drove by us and we followed him in our car. We drove alongside of him

(Testimony of Austin W. Seth.)

and as we got even with him, I fired twice at Fidel with the 30-30 rifle and Cecil shot once with the shotgun. We drove on and Fidel's car came to a stop as if nothing had happened. I heard a shot. I knew he was shooting at us. Our car had stalled and Giron couldn't get it going. I stepped out of the car and stood in the middle of the street and emptied the rifle into Fidel's car. I then ran because I was afraid Fidel might have someone in his house to help him. I ran through some heavy brush, leaving the rifle in the brush. I came out on a paved street and hailed a cab. I was in the cab when the police got me, or, rather, the cab stopped and turned me over to the police.

The reason I did not tell this true [196] story when I was first arrested was because I was confused and wanted to protect my friends. After thinking the matter over and discussing it with the detectives, I decided that the truth was the best solution.

I have read the foregoing three and a half pages and find them to be a true statement given by myself to Detectives Don Sprinkle and Austin Seth, without promise or dur——

Seth: Duress, that's duress.

Gonzales: ——duress. I have read the foregoing three and a half pages.

Sprinkle: Now is there anything else you wanted to add at the bottom? How was that now?

Seth: There was something you wanted to add, something you didn't like.

(Testimony of Austin W. Seth.)

Sprinkle: I have forgotten now, we had so much here.

Gonzales: Let's see——

Sprinkle: What was it we were going to add? Oh, that about your brother, that Fidel had seen you.

Gonzales: Oh, yes, that's right. [197]

Sprinkle: That Fidel had seen—oh, yes, that these——

Gonzales: That's right, that's right.

Sprinkle: One of the main reasons that Giron and Coluya were—how will we put it—were with you in this—is that it?

Gonzales: Wait a minute—the reason that Giron and Coluya were——

Seth: Were in trouble with Fidel was because they were seen with you.

Gonzales: That's right. Giron did not arrive home yet, huh?

Seth: No.

Gonzales: You see, it is just that they are guilty.

Seth: Yes.

Gonzales: You say it won't do them any good to run?

Seth: It's just going to be tougher on them.

Gonzales: Even if they didn't catch me, I couldn't escape on that.

Seth: Yes.

Gonzales: But to them, they'll still be complicated.

Seth: That's right.

(Testimony of Austin W. Seth.)

Gonzales: I knew they would get me, because——

Sprinkle: Yes, we have that on there now. Now what I want you to do is to sign it right on that line there, if you will. That's it. Now any place that we have crossed out or anything, I want you to initial it so that—let's see—that one is all right. Sign it right on this line where it says sign.

Gonzales: Rudy was here last night and they released him in about five minutes.

Sprinkle: Brought him in because he had that gun, but he has got a permit for it so we had to turn him loose.

Now on this here crossed out, just put your initials right there, Albert.

(Which concluded the transcription of the said recording.) [199]

The Court: You have some other questions, I believe you said?

Mr. Dimmick: Yes, your Honor, not very much.

Direct Examination—(Continued)

Q. (By Mr. Dimmick): Now any conversation that was had with Albert here and yourself and Sprinkle, is all of it detailed, all of your dealings with Gonzales detailed on that record, except for that portion of the time when Sprinkle was writing out the confession?

A. Yes and, like I say, the first two, three or four minutes, somewhere in there.

Q. Now did you continue on in this investiga-

(Testimony of Austin W. Seth.)

tion in connection with the other two parties who had been implicated?

A. Yes, sir. Immediately after this confession, I contacted several other police officers, the Safe Squad, Thomas and Ryan, and requested them to come along with us in making another arrest. At approximately 3 a.m. on the morning of the 8th we arrested defendant Coluya at his home. I believe it is about 415 Broadway, somewhere around there.

Q. Did you interrogate Coluya at all? [200]

A. Yes, I questioned him for, oh, four or five minutes, and he stated flatly he refused to talk until he had talked to Mr. Beardsley.

Q. Mr. Beardsley is his lawyer or was going to represent him? A. Yes, sir.

Q. And, in fact, did represent him at the proceedings where these men were convicted?

A. Yes, sir.

Q. And, in other words, that is all you ever got out of Coluya? A. That is true, sir.

Q. How about Giron?

A. Giron did not show up until the 9th.

Q. Let's go back. Are you familiar with this business of Giron's wife having been arrested?

A. Yes, not any connection with it myself, but I am familiar with the case, some parts of it.

Q. What do you know about her arrest?

A. Well, we had a young soldier, I believe it was a Paratrooper, in and he implicated Mrs. Giron and—

(Testimony of Austin W. Seth.)

Q. Was he the soldier who was mentioned on the wire recording?

A. On the wire recording. And he implicated himself and Mrs. Giron as renting the particular car that was used [201] in this deal that night, and I believe the officers arrested her for that reason. She was later released after investigation.

Q. All right, now, was she released before Giron was arrested or brought in, or how did that come about?

A. I'm not sure, I believe she was released before, but I'm not sure about that.

Q. You are not sure? A. No, sir.

Q. Do you know the circumstances surrounding Giron's being taken into custody?

A. I know that we could not locate him. Sprinkle and F made attempts to locate him and the men originally assigned to the case, Kirshner and Waite, made many attempts to locate him. Finally, contacted Mr. Beardsley on numerous occasions and the final time he said he would have his client in there Monday morning.

Q. Mr. Beardsley contacted the police department and told the police department that he would have Giron and bring him in Monday morning?

A. That is true, sir.

Q. And when did he turn in?

A. I believe it was—yes, it was on Monday. I'm not sure whether it was Monday morning or just what time it was, but I see in the statement, "Booked on the 9th," which [202] would be Monday.

(Testimony of Austin W. Seth.)

Q. And he came in with his attorney at the time?

A. I understand that he did, sir.

Q. Did that end your investigation of this case, do you remember?

A. Oh, I have had several things. We went out to the scene, took pictures there, various pictures I took following that, but that is about all. I had no connection other than with Giron or Coluya, or Gonzales, for that matter, after the statement.

Q. Now as I remember the thing, Gonzales was picked up very early Saturday morning and actually he was in custody over the week end, during which time he gave or made these two statements?

A. That is true, sir.

Q. And then do you know of your own knowledge when he was able to retain counsel?

A. No, I do not know.

Q. This Vertres of whom you spoke, is that John C. Vertres?

A. I don't know. Vertres is a young attorney, was—

Q. Blond boy, wasn't he, in the prosecutor's office? A. Real blond.

Q. He was in the prosecutor's office at that time?

A. Yes, that's right.

Q. He was actually working for the prosecuting attorney at [203] the time of this shooting?

A. I don't know if he was working for him or

(Testimony of Austin W. Seth.)

had just quit the prosecutor's office. I'm not sure.

Mr. Dimmick: I have no more questions.

Cross Examination

Q. (By Mr. Etter): As I follow your recording, Officer Seth, there is approximately a little bit in excess of thirteen and a half minutes of your recording that has to do with the interrogation prior to the time that Officer Sprinkle started to take down or write out or compose the confession; is that correct? A. I don't know.

Q. Hadn't you ever checked it to find out?

A. No, I never have.

Q. Would that be a reasonable estimate, do you think?

A. I don't know, sir, I couldn't tell you. The only way to do it would be to check it.

Q. Isn't the greater part of the record, approximately 20 minutes or more, devoted to the reading of the confession by Mr. Sprinkle and then the re-reading of it by Mr. Gonzales? Did you notice that when you were playing it?

A. No, I didn't. Like I say, I didn't pay particular [204] attention to the time.

Q. Would it be a fair assumption, Mr. Seth, that the record player that you have here was turned off at least two hours during the interrogation and discussion with Mr. Gonzales?

A. I don't believe it took that long to take that statement. An hour, hour and a half.

Q. Beg pardon?

(Testimony of Austin W. Seth.)

A. Hour to an hour and a half. It could be two hours, but I don't believe it took that long to take a three and a half page statement, although we did have difficulty in understanding, and so on, back and forth.

Q. Well, you started this machine at approximately 11:30, isn't that right?

A. Somewhere around there.

Q. And the confession, you finished the confession at approximately 2:10 the following morning?

A. Yes.

Q. That is approximately two hours and 40 minutes.

A. We signed it at 2:10.

Q. Yes. Right after this last statement of his, isn't that correct?

A. Yes, how long it took to sign it. It may have been 5, 10, 15 minutes, but nothing more than that.

Q. All right, assume it was 10 minutes and that you [205] finished at 2 o'clock, it took 10 minutes to get the signature on there; there is almost two hours, is there not, from 11:30?

A. That's right.

Q. And this machine, as I time it, is just short of 35 minutes.

A. 35 minutes?

A. This recording. Now isn't it fair to assume that there was questioning and discussion going on for some actual two hours during that period of time?

A. That must be it then, sir. Like I say, I have never timed it.

Q. Correct. It is a fact, is it not, that no call

(Testimony of Austin W. Seth.)

was made to any attorney of Mr. Gonzales until after he signed a confession?

A. I believe that a call was made to Mr. Vertres prior to that.

Q. Do you know that it was?

A. We put in three or four calls to Mr. Vertres.

Q. When did you, yourself, put one in, if you made it?

A. About—I got hold of him about 2:30, but I'm pretty sure that Detective Sprinkle called him before midnight.

Q. Were you there? Do you know that Detective Sprinkle called him?

A. I know that he told me he had made a call and I know [206] that the defendant here also made a call. I don't know whether defendant made a call before or after. I got hold of Vertres about 2:30.

Q. Well, when you two officers were assigned to this case, I would assume it would be approximately just shortly before 10:30, is that correct, on the night of the 7th?

A. Somewhere around there, yes, within a half hour one way or the other.

Q. And you were assigned by what superior officer?

Mr. Dimmick: Just a minute. Did you say assigned to the case at 10:30 on the 7th? Yes, that's right, okay.

A. Yes.

Mr. Dimmick: 10:30 p.m.

(Testimony of Austin W. Seth.)

Mr. Etter: 10:30 p.m. on the 7th, yes.

Q. That would be Saturday, 10:30 Saturday evening, Saturday night?

A. Yes, that would be Saturday night.

Q. What superior officer assigned you to that case? A. I don't recall.

Q. Beg pardon?

A. I don't recall who assigned it. It could be Sergeant O'Mara. I don't know just who was on the shift.

Q. Did you have any discussion about the case with the officer that assigned it to you before you began the questioning at 10:30 or 11:30 that evening; that is, the [207] evening of the 7th?

A. Yes.

Q. Who did you talk to?

A. I believe somewhere—this is two years ago, I can't just recall it—but we discussed with somebody there the details of the case or what was known of it, and it was Sergeant O'Mara. He suggested or we suggested that we be allowed to talk to Albert Gonzales because of knowing some of the background and his brother.

Q. You knew, did you not, that he had been arrested in the morning, he had been arrested at approximately 1:30 or thereabouts?

A. Yes, I knew that.

Q. And knew that he had given a statement at approximately 5 o'clock on Saturday morning?

A. Yes.

(Testimony of Austin W. Seth.)

Q. And you read the statement, I assume?

A. I read it.

Q. And did you discuss it with any of the police officers? A. I believe I did.

Q. You did? A. Yes.

Q. And did you make any comment about this statement?

A. Yes, I didn't believe it was the whole story.

Q. I see. When did you first talk with any police officer [208] about this statement?

A. I don't know. It must have been around that 10, 10:30 period, somewhere in there.

Q. Did any of the officers that talked to you, Sergeant O'Mara or anybody in command at the police station, tell you about any discussions they had had with the Petitioner Gonzales following his arrest and detention at the central police station at approximately 1:30 on the morning of the 7th?

A. Not that I recall.

Q. Didn't discuss any questioning?

A. I can't recall it. It is possible.

Q. Did you discuss this statement with Paul Foster, I think is his name, that appears here?

A. Sergeant Foster? I don't believe so, because Sergeant Foster was on the midnight shift and I don't believe Sergeant Foster would have been there yet at that time, or if he come down early, it is possible that I talked with him, but I'm not sure.

Q. Do you know or were you advised that any request had been made for counsel during Saturday morning or Saturday afternoon?

(Testimony of Austin W. Seth.)

A. No, I was not.

Q. You were not. And the first thing you know about it is Saturday night, is that correct? [209]

A. That is true.

Q. When he asked to see his lawyer, did you ask him if he had made any inquiry during Saturday? Did you discuss that with him?

A. Not that I recall.

Q. You did not?

A. Not that I recall. I don't know.

Q. Then you say that the first time that he discussed the matter of being abused or assaulted or threatened was after you had this statement, is that it?

A. Yes, the following day, I believe it would be.

Q. I see. And that was made to you?

A. No, it was not made to me, it was made to, I believe, Sergeant O'Mara, or somebody got that statement from the jail and, like I say, I can't give you a definite answer on it, but it did not come directly from Albert Gonzales to me.

Q. It did not?

A. But as soon as I heard of it, I requested the examination.

Q. I see. And you don't recall that any statement was made to you? A. No, I don't recall it.

Q. Did you have a picture taken? A. I took it.

Q. You took the picture? A. Yes.

Q. Have you got the picture?

A. It is in the court records.

Q. I see. And the picture you took was a picture,

(Testimony of Austin W. Seth.)

was it not, of Gonzales stripped to the waist and from the waist up?

A. No, no, I think he just had on his shorts.

Q. You didn't take any picture of his groin, did you?

A. I took about four pictures. I'm not sure, I believe I did.

Q. When did you take the pictures?

A. Right after the examination.

Q. Right after the examination? A. Yes.

Q. And at the time you took the pictures, did you talk with Gonzales about any injuries that he claimed he sustained? Did you talk with him at that time?

A. I probably did. I can't recall any details.

Q. What did you tell him you were taking the pictures for?

A. To show if there was any marks.

Q. Any marks? A. That is true.

Q. You mean, then, you discussed it with him?

A. No, I don't believe I did. There was Detective Sprinkle, [211] Detective Johnson and several others there when I took those pictures. I just took the pictures.

Q. I know, but do you mean to say that you just walked down and took this man up and said, "We're going to take some pictures?"

A. Yes.

Q. Is that right? A. That is, probably.

Q. Didn't tell him why?

A. Yes, I probably explained why.

(Testimony of Austin W. Seth.)

Q. What did he say? A. I don't recall.

Q. Well, did he name anybody as having assaulted him?

A. No, he did not name anybody to me at all.

Q. I see. What did he say then about being hurt?

A. He said—wait a minute now—I can't recall the exact conversation, but he claimed that he had been struck.

Q. He had been struck by whom, did he say?

A. He didn't tell me.

Q. Didn't tell you? A. No, sir.

Q. Did the police make any further investigation at the Police Department to determine whether or not any officer had struck him?

A. I did not. [212]

Q. Did anybody else that you know of?

A. I understand the Chief of Detectives had a line-up of the detectives. I was not present, neither was Detective Sprinkle, at that line-up.

Q. I see. And a line-up, is that the time that Mr. Gonzales and his attorney attempted to pick out one of the men who he claimed had assaulted him? A. Yes, I understand they did.

Q. Mr. Thomas wasn't there at that line-up, either, was he?

A. I don't know, I was not there.

Q. So you had no discussion about the purpose of the pictures other than to say, "We're going to take these pictures of you?"

A. That is, I believe to be true.

Q. You didn't talk with him at that time about

(Testimony of Austin W. Seth.)

the statement that you had received from him? You didn't inquire about it?

A. If I can state this, I do believe that Detective Sprinkle asked him why he hadn't discussed this with us.

Q. I see. Did Detective Sprinkle discuss that in your presence with Gonzales?

A. Yes, I believe it was.

Q. On the day——

A. While I was taking the pictures.

Q. While you were taking the pictures? [213]

A. Yes.

Q. Who else was present?

A. I believe a Detective Chet Johnson and I believe Sergeant O'Mara and a Dr. Brown.

Q. All right. And when Detective Sprinkle said, "Why didn't you mention that to us when we were talking with you?" What did Mr. Gonzales say to that? A. I don't recall.

Q. Were you advised at all when you were assigned to this case of any interrogation that had previously been made or taken of the petitioner Gonzales? Had you been advised of all of the events in relation to him that had transpired since he was arrested, or not?

A. I had been advised that a statement was taken at 5 o'clock.

Q. I see.

A. That morning. Or taken or signed at 5, I don't know, somewhere in that vicinity.

Q. I see. And you examined it, is that right?

(Testimony of Austin W. Seth.)

A. I read it over, yes.

Q. And were not satisfied with it?

A. No, sir.

Q. And decided that you would take another one, is that it? A. That's right.

Q. Did you discuss this statement prior to the time that [214] you started your recording?

A. Probably did, referred to it. I don't know about discussing it at any length.

Q. After this second statement was given, do you know whether or not Gonzales was taken down in an automobile by any of the detectives for the purpose of taking him up to Giron's house?

A. The first I heard of that was right in the courtroom here, so I did not hear.

Q. Do you know whether that occurred or not?

A. I do not know of any such happening.

Q. I see, you do not know, all right. You had nothing further then, I assume, to do with the questioning or the investigation after that time?

A. Several minor details. I went out to the scene and looked for the guns and looked for bullet holes in the telephone poles and things.

Mr. Dimmick: If I may for the record, that alleged ride that he took was immediately after giving the first statement at 5 a.m., not after the second statement.

Mr. Etter: Well, maybe it was a mistake. I will inquire whether or not he knew whether he was taken for a ride up to Giron's house at any time after the first or the second statement?

(Testimony of Austin W. Seth.)

A. No, sir, I do not. [215]

Q. That you know about? A. No, sir.

Mr. Etter: That is all.

The Court: Any other questions?

Mr. Dimmick: That is all.

The Court: That is all.

The Witness: Thank you, sir.

(Witness excused.)

Mr. Dimmick: Now I believe that in the affidavits of Coluya and Giron, one of the issues that was raised was whether or not in instructing the jury the confession and all was taken into consideration in the determination of the jury.

Now I have here certified copies of the instructions given by James W. Hodson, Judge, in the Superior Court of the State of Washington for King County, in State of Washington vs. Albert Gonzales, William Giron and Cecil Coluya.

The Court: That is a certified copy?

Mr. Dimmick: Yes, your Honor.

The Court: Have you seen this, Mr. Etter?

Mr. Etter: No, I haven't seen any of it. I don't know that the instructions are material to this inquiry. They may be.

Mr. Dimmick: That was raised the last time, most assuredly, or I wouldn't have taken the trouble to bring them in. [216]

The Court: They might be. I presume there is an instruction in there that instructs the jury that the confession of Gonzales is to be considered as evidence only against him and not against the other

defendants named in it. Is there an instruction of that kind in there?

Mr. Dimmick: Yes, your Honor. Particularly, I think it is Instructions 12, 13, 14 and 15.

The Clerk: Marked as Respondent's Exhibit 7 for identification.

The Court: This wire recording has now been incorporated in the record and I see no reason why you shouldn't just take that with you and take it back. There would be no occasion for keeping it here any longer, and I suggest that it simply be withdrawn and you take it with you. We have its contents in the record, anyway.

Mr. Seth: All right, sir, thank you.

The Court: Perhaps I should show I was addressing these last remarks to Sergeant Seth.

Mr. Dimmick: Well, I will request the Court that the wire recording used in the proceeding—

The Court: I have just told Sergeant Seth to take it, that we wouldn't require it any longer here, and this will be admitted. What exhibit number is that?

The Clerk: Respondent's No. 7, your Honor.

The Court: All right. [217]

(Whereupon, the instructions referred to hereinbefore were admitted in evidence as Respondent's Exhibit No. 7.)

Mr. Dimmick: That is all the witnesses.

The Court: All right, I will hear your argument, then. Do you have any further testimony?

Mr. Etter: I just want to ask one question of the Sergeant.

AUSTIN W. SETH

having previously been duly sworn, resumed the stand and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Etter): After the confessions were secured, was it then that the arrests were made of both Coluya and Giron?

A. Yes, it was after.

Q. It was after that? A. That's right.

Mr. Etter: All right.

(Witness excused.)

The Court: All right, I will hear your argument.

(Whereupon, oral argument was made to the Court by counsel for the respective parties.)

The Court: Well, I will take this under advisement. [218] I will not ask you to submit briefs because I have a pretty good card index on habeas corpus. I think I have most of the decisions where I can get them out of briefs.

Mr. Etter: May we submit authorities if we find some that would be helpful?

The Court: Yes, either of you. I will be back in Spokane, I think, in about ten days and I intend to dispose of it very promptly after that. But if at any time within the next ten days or so you think of some authorities or have some you wish to submit, just put them on an informal list or a letter and give counsel a copy.

Mr. Etter: Fine.

The Court: Either one of you may do that.

(Whereupon, the hearing in the above cause was adjourned.) [219]

Yakima, Wash., Dec. 17, 1953, 10:00 o'clock a.m.

(Pursuant to the filing of the written opinion of the Court on October 14, 1953, in the above matter, and the amendment thereto filed on December 7, 1953, a petition for re-argument was filed on December 15, 1953, and the following proceedings were had, to-wit:)

The Court: Now Gonzales against John R. Cranor.

I think I should have some clarification here of the rather unusual situation that has developed before we proceed with the argument.

The opinion which I filed sometime ago was criticized rather severely in the Seattle Post-Intelligencer, both in the news columns and in editorials. Then Mr. Alfred Schweppe, an attorney of Seattle, Washington, whom I have known for a great many years, I was on the Judicial Conference of the State of Washington with him many years ago, and I understand that not very long ago he made a study of the problems that arise in connection with these numerous petitions for habeas corpus by state prisoners, both to the state courts and to the Federal courts, he thought that the editorial staff of the Post-Intelligencer and some of the people who have been interviewed and whose opinions have been published in the Post-Intelligencer have

the wrong [220] conception of the powers and duties of the Federal District Court.

Where a petition is presented by a state prisoner, the *Post-Intelligencer* and the people whom they interviewed took the position that I had acted without jurisdiction, without authority.

I had thought that the case was ripe for consideration on the merits and decided it on the merits.

I am explaining all this leading up to the development that in this exchange of correspondence between Mr. Schweppe and the *Post-Intelligencer*—I didn't state, I believe, that Mr. Schweppe with a very commendable public spirit wrote to the *Post-Intelligencer* pointing out where he thought they were in error in their conclusions as to my powers and duties. He did it purely for public spirited motives. He has no interest in the case whatsoever and simply felt it was his duty as an attorney to come to the defense of the Court, which he thought had been improperly criticized and inaccurately criticized, perhaps.

In the correspondence which followed between Mr. Schweppe and the attorneys for the *Post-Intelligencer*, Tanner, Garvin & Ashley, Mr. Ashley directed a letter to me. I might say that after this exchange back and forth, they finally came out with the principal remaining contention of the *Post-Intelligencer* and its attorneys that Gonzales [221] had not exhausted his remedies in the courts of the state, as required by the Federal statute, because he had not perfected an appeal from his con-

viction in the Superior Court of the State of Washington for King County.

Now Mr. Ashley, of the firm of Tanner, Garvin & Ashley, wrote to me about that issue, and I will say, in justice to him, that he didn't show the slightest disposition or intention of improperly influencing the Court. I don't think it occurred to him that the case was still pending and that my findings and conclusions and final order had not yet been signed. But I thought that in view of the posture of the case, it not having been finally decided, that I shouldn't enter into a discussion with him about possible issues that might come up on motion for rehearing.

So I directed a letter to the attorneys on both sides here, calling their attention to the fact that these contentions were made as to my jurisdiction and as to the exhaustion of state remedies, and suggested that perhaps it might be well to argue or discuss it here. It is a matter of considerable importance to this Court, because I get a great many of these applications and I think, although I haven't checked up statistically, that probably more than half of them have not appealed to the State Supreme Court from their conviction in the state court, so that if that bars them from coming into Federal Court, I am doing a lot [222] of work for nothing and bringing the Assistant Attorney General over to Walla Walla many times when it wouldn't be necessary, if I need not consider cases where no appeal has been taken from the state con-

viction. I don't think that that is tenable, but I will hear from counsel about it.

Now I invited the attorneys for the P.I. in this situation to appear, if they cared to, as *Amicus Curiae*. Mr. Ashley wrote to me declining to do so as he thought it wouldn't be wise or advisable in the circumstances, but I did get a letter from the firm of Rummel, Griffin & Short of Seattle, who asked to appear *Amicus Curiae* at the request of Judge Hodson. Judge Hodson was the judge who presided in the state court trial of Gonzales and his co-defendants. So that I have an appearance here by the firm of Rummel, Griffin & Short, appearing at the request of the state court judge. They have filed a brief and I am not sure whether they are appearing in person or not. Is anybody here representing the firm of Rummel, Griffin & Short?

Mr. Short: Yes, I am Kenneth Short, I am appearing on behalf of *Amicus Curiae*.

The Court: All right. Mr. Etter?

Mr. Etter: Your Honor, may I interject before we get underway, we have all had some correspondence apparently on this matter. I had some with the Dean of the University [223] of Washington Law School, who apparently called Judge Hodson and discussed my correspondence with him and then wrote me back a letter. There are a couple of things that I think ought to be cleared up before we start.

In the first place, the Dean took the position over there that we couldn't confer jurisdiction on the Court by stipulation, and I think that we can

all agree that neither Mr. Dimmick or Mr. Eastvold or I or any other adverse parties can confer jurisdiction by a simple statement that we stipulate that the Court may decide it.

But the issue here wasn't that, in my opinion, it was the stipulation of facts from which the Court could find jurisdiction.

Then Judge Hodson indicated that he didn't believe, but he was going to check the record to find out, that Mr. Gonzales had ever applied in the Supreme Court of the State of Washington for a writ of habeas corpus, and so it presents the same things that we thought were settled by the stipulation.

So inasmuch as the Court had not entered its findings or conclusions, I sent to the Clerk of the Supreme Court and I have received from him and I would like to introduce as part of the record the certified copies, under the seal of the Supreme Court, of all the proceedings in the Supreme Court of the State of Washington, which show the [224] motion and notice of appeal, the order denying it—that is on the matter of habeas corpus—and then the order of the Supreme Court of the United States denying certiorari, which are now on file in this cause, with the Court's permission, just so there will be no misunderstanding about that.

I would like to let Mr. Dimmick, if he wishes, examine it and have it marked and put it in as an exhibit so that we can get that matter determined.

The Court: Have you any objection to that?

Mr. Dimmick: As a matter of fact, I am very happy to concur. The tenor of the letters—I have

had very little correspondence with anyone in connection with this case for obvious reasons——

The Court: May I make it clear at the outset that the Attorney General has not engaged in any of this newspaper controversy at all. I am not inferring that in the slightest way.

Mr. Dimmick: I know, but the newspaper inferred that the Attorney General was a nincompoop, and that may be true——

The Court: The only thing I saw was that the Attorney General stated that he intended to appeal if the order stood, and I assumed that is what you would do. I think the case ought to be appealed. I want a ruling from the Court of Appeals on the question if my final decision is as set [225] out in the opinion.

Mr. Dimmick: The inference was, of course, we never protested this business of the Court assuming jurisdiction.

I want to say that this stipulation that Mr. Etter and I signed was a stipulation to only one thing, and that was that the petitioners had applied to the Supreme Court of the State of Washington for a writ of habeas corpus, which had been denied; that they had subsequently applied for certiorari to the Supreme Court of the United States, which had been denied. Period. That's all that we ever stipulated to, there never was any stipulation as to anything else, and I might say that my files, up to the time of the conclusion of the article that was written, to my knowledge have never been even looked at. So——

The Court: Well, I think to use an excess of caution, if I may put it that way, I think the documents should be received and they will be admitted in evidence. What is the next number?

Mr. Etter: Mr. Dimmick is entirely correct, all we have done is stipulate to certain facts.

Mr. Dimmick: I am familiar with this.

Mr. Etter: That is correct, and we filed that.

The Court: I might say the reason I use the term "excess of caution," there are two reasons why I think your stipulation was all right and the Court was justified in [226] acting upon it: One is it isn't a stipulation of jurisdiction; it is merely a stipulation of fact; and I think it is commendable for counsel to stipulate and avoid the expense and trouble of getting certified copies where there is no question but what the petitioner did petition the State Supreme Court for habeas corpus and then applied for certiorari to the United States Supreme Court. So it wasn't a stipulation of jurisdiction, but a stipulation of fact.

Another thing, I don't think that this requirement that a state prisoner exhaust his remedies in the state court is jurisdictional. It is not a jurisdictional requirement, but is merely a statutory requirement that is set out in the act of Congress which gives the Federal Court power and jurisdiction to try these petitions from state prisoners, and it is a statutory direction and requirement that is for the sake of keeping good relations between the state and Federal Court, a matter of comity.

But, at any rate, we will nail down on it by admitting this exhibit in evidence.

I think before we proceed here we should have some understanding about the time. I got a little behind on my calendar and have two cases set for this afternoon, one to complete for argument and another to begin. What is your idea about the amount of time that you think you should have, Mr. Dimmick? [227]

Mr. Dimmick: I am assuming that you are going to allow my argument on the request that I sent over, request for re-argument, and I want to state that under the authority of *Partridge vs. Crespey*, 189 Federal (2d), 645, that it also can be considered as a motion for a new trial at this time, although the order is not signed.

The Court: I thought that the logical order in which to take up these matters would be first the motion for re-argument or for rehearing or for new trial, whatever you may designate it, and then take up the matter of settling the findings.

Mr. Dimmick: Yes.

The Court: And you have no objection to that, Mr. Etter, I presume?

Mr. Etter: None.

The Court: And you will not raise the question as to whether the motion should be made before or after the findings are signed?

Mr. Etter: Not a bit.

(Whereupon, after further colloquy between Court and counsel, arguments were made to the Court by Mr. Short, Mr. Dimmick and Mr. Etter, and the following oral opinion was rendered by the Court:) [228]

Oral Opinion of the Court

The Court: Well, gentlemen, I sincerely appreciate your assistance in these matters. I appreciate Mr. Short's firm participating and his making a very lawyer-like argument, that he is here as a friend of the Court.

I have already stated my conclusion on the merits, and it is further my conclusion that there was here an exhaustion of state remedies. I think that I should hold that because of the decisions of the Ninth Circuit Court of Appeals here, cases cited by Mr. Schweppe's letter—I understand he sent you gentlemen copies of it, did he not? That is, you got a copy of it, Mr. Etter?

Mr. Etter: Well, I had left before it came, but Mr. Short had it this morning and I think he sent me one.

The Court: In the copy he sent to me, he said he had sent it to all the people I had addressed, which would include you gentlemen, attorneys on both sides of this case.

"Even in Justice Reed's opinion in *Brown vs. Allen*," and I am reading now from brief of Amicus

Curiaea,

“there is this statement,”
which I agree with Mr. Schweppe applies to this case. The statement is:

“ ‘Of course, federal habeas corpus is allowed where time has expired without appeal when the prisoner is detained without opportunity to appeal because [229] of lack of counsel, incapacity, or some interference by officials.’ ”

And:

“ ‘Also, this Court will review state habeas corpus proceedings, even though no appeal was taken, if the state treated habeas corpus as permissible. Federal habeas corpus is available following our refusal to review such state habeas corpus proceedings. Failure to appeal is much like a failure to raise a known and existing question of unconstitutional proceeding or action prior to conviction or commitment. Such failure, of course, bars subsequent objection to conviction on those grounds.’ ”

I think here where there has been habeas corpus, which it is conceded by all, habeas corpus application to the State Supreme Court, which it is conceded by everybody, apparently, that Gonzales had the right to carry on in this case, and that that habeas corpus results in a denial of the petition and he petitions for certiorari to the United States Supreme Court and that is denied, that he has then exhausted his state remedies, and the Federal District Court, under the governing statute, properly may consider and pass upon his petition to the Federal Court.

Now I don't like to unduly emphasize this *Brown* [230] vs. *Allen*, but that case is particularly apt here, I think, because in *Brown vs. Allen* the opinion covers about 116 pages—don't be alarmed, I'm not going to read it all—but in that case two different Justices of the United States Supreme Court undertook to lay down the rules by which Federal District Courts should be governed in passing upon applications to the Federal Courts for habeas corpus by state prisoners. Mr. Justice Reed wrote one of the opinions of the Court; Mr. Justice Frankfurter wrote another; and he wasn't altogether satisfied with Justice Reed's exposition of the gospel so he said he was going to add to it and give it a little more detail and be a little more explicit.

So here we have the highest Court in the Federal system talking directly to the lowest Court. We have here the General talking to the privates in the ranks telling them what they should do. I am the private and, of course, in this Federal Court army the Supreme Court is the General, the Justices of the Supreme Court.

Now I think it is particularly appropriate to read at some length from this opinion because Mr. Justice Frankfurter deals with this whole problem that has been brought out here and concerning which I think the *Seattle Post-Intelligencer* and the people it interviewed over there showed an amazing lack of understanding and knowledge [231] concerning just what the duties of a Federal District Court are in these matters, and for that reason I will quote at some length from this opinion, be-

ginning on Page 497 of the United States Report, which is Volume 344 of the United States Reports. I will try not to go over again the ground covered by Mr. Etter in his argument in quoting from this opinion. But Mr. Justice Frankfurter says:

“I deem it appropriate to begin by making explicit some basic considerations underlying the federal habeas corpus jurisdiction. Experience may be summoned to support the belief that most claims in these attempts to obtain review of State convictions are without merit. Presumably they are adequately dealt with in the States courts. Again, no one can feel more strongly than I do that a casual, unrestricted opening of the doors of the federal courts to these claims not only would cast an undue burden upon those courts, but would also disregard our duty to support and not weaken the sturdy enforcement of their criminal laws by the States. That wholesale opening of State prison doors by federal courts is, however, not at all the real issue before us is best indicated by a survey recently prepared in the Administrative Office of the [232] United States Courts for the Conference of Chief Justices: of all federal question applications for habeas corpus, some not even relating to State convictions, only 67 out of 3,702 applications were granted in the last seven years. And ‘only a small number’ of these 67 applications resulted in release from prison: ‘a more detailed study over the last four years * * * shows that out of 29 petitions granted, there were only 5 petitioners who were released from state penitentiaries.’ The meritorious

claims are few, but our procedures must ensure that those few claims are not stifled by indiscriminating generalities. The complexities of our federalism and the workings of a scheme of government involving the interplay of two governments, one of which is subject to limitations enforceable by the other, are not to be escaped by simple, rigid rules which, by avoiding some abuses, generate others.

For surely it is an abuse to deal too casually and too lightly with rights guaranteed by the Federal Constitution, even though they involve limitations upon State power and [233] may be invoked by those morally unworthy. Under the guise of fashioning a procedural rule, we are not justified in wiping out the practical efficacy of a jurisdiction conferred by Congress on the District Courts. Rules which in effect treat all these cases indiscriminately as frivolous do not fall far short of abolishing this head of jurisdiction.

Congress could have left the enforcement of federal constitutional rights governing the administration of criminal justice in the States exclusively to the State courts. * * *

And then he points out that Congress didn't do so, that Congress by the Act of 1867 placed that responsibility in the Federal District Court.

"As Mr. Justice Bradley, with his usual acuteness, commented not long after the passage of that act, 'although it may appear unseemly that a prisoner, after conviction in a state court, should be set at liberty by a single judge on habeas corpus,

there seems to be no escape from the law'. * * * "

Then turning to the top of Page 501: "Our problem arises because Congress has told the District Judge to act on those occasions, [234] however rare, when there are meritorious causes in which habeas corpus is the ultimate and only relief and designed to be such." * * *

And then turning to Page 508:

"These standards, addressed as they are to the practical situation facing the District Judge, recognize the discretion of judges to give weight to whatever may be relevant in the State proceedings, and yet preserve the full implication of the requirement of Congress that the District Judge decide constitutional questions presented by a State prisoner even after his claims have been carefully considered by the State courts. Congress has the power to distribute among the courts of the States and of the United States jurisdiction to determine federal claims. It has seen fit to give this Court power to review errors of federal law in State determinations, and in addition to give to the lower federal courts power to inquire into federal claims, by way of habeas corpus. * * * But it would be in disregard of what Congress has expressly required to deny State prisoners access to the federal courts. * * * Insofar as this jurisdiction [235] enables federal district courts to entertain claims that State Supreme Courts have denied rights guaranteed by the United States Constitution, it is not a case of a lower court sitting in judgment on a higher court. It is merely one aspect of respecting the Supremacy

Clause of the Constitution whereby federal law is higher than State law. It is for the Congress to designate the member in the hierarchy of the federal judiciary to express the higher law. The fact that Congress has authorized district courts to be the organ of the higher law rather than a Court of Appeals, or exclusively this Court, does not mean that it allows a lower court to overrule a higher court. It merely expresses the choice of Congress how the superior authority of federal law should be asserted." * * *

Congress and the Supreme Court, then, have imposed upon Federal District Courts the power and the duty to consider and decide applications for habeas corpus by state prisoners. It is a difficult and burdensome duty. During the fiscal year which ended July 1, 1953, thirty-two such applications were filed in this Court. Twenty-two more have been submitted since July 1st. I have tried in [236] every way possible to minimize the trouble, inconvenience and expense which such applications necessarily impose upon the state courts, the Superintendent of the penitentiary and the State Attorney General. I decide more than half of them without issuing a show cause order or calling for a hearing. So far as I can now recall, I have granted only two, including Gonzales, in the past five years, and no state prisoner has been released by my order during that period.

The unfortunate thing about the newspaper criticism of the Gonzales decision in the Seattle Post-Intelligencer is that it fails to recognize that there

is a problem, but instead blames the individual Federal Judge who tried the case for what is regarded as its bad result. The newspaper charged that, as such judge, I exceeded my constitutional and statutory authority; that I improperly interfered with and violated state rights, and that I capriciously and gratuitously interfered with the state's enforcement of its criminal laws.

Now under ordinary circumstances I would not say anything about newspaper or other criticism of my judicial acts. I have been criticized by experts—lawyers, law school journals, judges of appellate courts and others—and I have never complained. In a democracy, free and open criticism is healthful and stimulating. No public official or public institution, including judges and courts, should [237] be above or immune to criticism. But if it is to be in the public interest, criticism should be fair, informed and constructive. The *Seattle Post-Intelligencer's* criticism of my opinion in the present case was not of that character. In effect, it accused me of arbitrary, injudicial conduct. It was such as to discredit and lower public confidence in a Federal District Court, and in the peculiar circumstances presented here, I feel that it is my duty to speak up in defense of the Court.

I can well understand how the newspaper articles happened to be published. When the newspaper people learned that a conviction of murder of a defendant in a state court jury trial in Seattle had been set aside by an Eastern Washington Federal Judge, their natural reaction was one of shock

and resentment. They proceeded to interview the Superior Court Judge who presided at the trial, a law school dean, and perhaps some other lawyers. The comments of these gentlemen, as published in the P. I., showed a surprising lack of understanding and of misunderstanding of the law governing the powers and duties of a Federal District Judge in habeas corpus proceedings by state prisoners.

Now I do not intend any disparagement by that statement. Federal habeas corpus is a highly specialized difficult branch of the law, and lawyers and judges who have not had occasion to study or deal with it are not very [238] familiar with it. Moreover, the Seattle gentlemen interviewed by the P. I. were expressing spur-of-the-moment, curbstone opinions. They had not had an opportunity to read my opinion or examine the record on which it was based. They did not know the contentions or issues presented by counsel in the case.

Sometime later, on October 21, 1953, the P. I. published an editorial entitled "State Rights Invaded?" In fairness to the newspaper's editorial staff, I feel I should point out that they doubtless relied upon the opinions of the judge and the lawyers who had been interviewed and, as it now appears, prior to its publication the editorial was submitted to and approved by the newspaper's Seattle attorneys. I quote from the editorial as follows:

"Last week this murder conviction (of Gonzales) was set aside by Federal Judge Sam M. Driver. This means that while Gonzales may not be immediately released from prison, he will go free eventu-

ally unless the state assumes the trouble and expense of an appeal, which presumably it will do.

“The Federal decision was based upon Gonzales’ plea that his confession was obtained by force and threats from police detectives. But obviously the jury did not believe there was [239] coercion, and neither did Judge Hodson. Furthermore, the jury was instructed carefully by the latter as to the weight of confession within the total evidence, which total was considerable. However, there is a far broader and deeper issue here—one going beyond judgments from the bench and far beyond the case of *Albert Gonzales vs. Law Abiding Citizens*. In the opinion of some of Seattle’s legal minds, there is grave doubt as to the constitutionality of the statute which seems to allow Judge Driver to set aside the state’s verdict. That, of course, is for the legal eagles to ponder; and, we trust, to correct when and if possible. What seems far more clear is that this is an invasion of states’ rights by the Federal Government. And with due respect to the Federal court, we cannot avoid the feeling that the tenor of this Federal judge’s opinion was uncalled for, injudicious, and an unjustified reflection on Judge Hodson and the twelve Seattle citizens called for jury duty.”

That is the end of the quotation from the editorial of the *Seattle Post-Intelligencer*.

In addition to its being based upon a fundamentally false conception of the powers and duties of a [240] Federal Judge, the editorial clearly indicates that the writer had not ever read the opinion

which he so glibly condemned as uncalled for and injudicious. The opinion does not cast the slightest reflection on either Judge Hodson or the jury, as a casual reading of it would disclose even to an intelligent layman. As stated in the opinion, Judge Hodson's sole function with respect to the Gonzales' confession was to determine whether there was conflicting evidence that it was coerced. Having made that determination, it was his duty under the applicable state statute to submit it to the jury with all the evidence as to how it was taken. The jury, under instructions of the Court, had to decide whether the confession was coerced or voluntary, but the jury could not make any specific finding on that question. There is no provision for it, as has been pointed out here, in the state practice. The only expression it could make was its general verdict. It returned a verdict of guilty. There was evidence of guilt other than the confession. It is impossible to say, therefore, whether the jury accepted the confession as voluntary or rejected it as coerced and found the defendant guilty on the other evidence.

The question Judge Hodson and his jury had before them was the guilt or innocence of the accused. In the habeas corpus proceeding I was not concerned with that question. I had to decide whether Gonzales had been denied [241] due process of law in violation of the United States Constitution by the use as evidence against him of a coerced confession. Judge Hodson never had an opportunity to decide whether Gonzales' confession was coerced,

and no one possibly can say how the jury decided that tissue, so how could my opinion be any reflection on Judge Hodson or the jury?

When Alfred J. Schweppe wrote to the *Post-Intelligencer* correctly and ably stating the law governing the duties of a Federal District Judge in habeas corpus proceedings, the newspaper published his letter on the editorial page, but appended to it an editor's note to the effect that although it was a "good statement of principles," it overlooked a basic issue raised by my opinion, namely, that Gonzales had not exhausted his state remedies for the reason that he had not appealed from his conviction to the State Supreme Court. That issue has been argued here today and I have found that it has no merit and, of course, as I pointed out here, that question, that issue, was never raised before me in the entire proceedings, although there were three separate hearings in the Gonzales case at Walla Walla. So we have here also a judge being accused of improper and injudicious conduct for not deciding properly an issue that was not submitted to him by capable counsel in the case. This issue as to whether Gonzales exhausted his state remedies has, as you see, been decided adversely to [242] the contention that the remedies have not been exhausted.

I shall close these remarks with the observation that it is very important in these times that public respect for and confidence in the courts be maintained and press criticism of the courts, therefore, should be temperate, fair and constructive. And

may I add it has been my experience and observation that the press generally follows such policy. My relations with the press have been singularly congenial and happy. In almost fourteen years on the bench of state and federal court, this is the first time I have been criticized by the press for what is claimed to be improper or injudicious conduct.

Well, that is all I have to say, gentlemen. We now have the problem of settling the findings here. You have been submitted a copy of them, have you not?

Mr. Dimmick: Yes, I have. I assume that my petition for rehearing is denied?

The Court: Yes, I didn't say so in so many words, I presume, but that was the purport of my remarks I think.

I might here say that Mr. Etter sent me a copy of his proposed findings. You have a copy of them?

Mr. Etter: Yes, I do, your Honor, I have a copy.

The Court: And there are a few suggestions that I would like to make here. First, I don't want to foreclose counsel from making other suggestions or from discussing [243] mine, but I thought it might be helpful to start out by saying that I think the designation of "defendant" should be "respondent" throughout the findings.

(Further colloquy between Court and counsel concerning findings and conclusions of law, after which the following proceedings were had, to-wit.)

Mr. Dimmick: Well, for the record, and par-

ticularly with respect to Findings Nos. III, IV, V, VI and VII, and the four paragraphs of conclusions, I want to except to those.

The Court: Yes. Very well, the record may show that.

(Which was all of the proceedings had and evidence adduced on the hearing of the above-entitled cause.) [244]

[Endorsed]: Filed February 11, 1954.

[Title of District Court and Cause.]

RETURN AND ANSWER

Comes now John R. Cranor, Superintendent of the Washington State Penitentiary at Walla Walla, Washington, through his attorneys, Don Eastvold, Attorney General, and Cyrus A. Dimmick, Assistant Attorney General, and in answer to the order to show cause and petition on file herein admits, denies and alleges as follows:

I.

Answering the petition of William Giron, Albert Gonzales and Cecil Coluya on file herein, respondent denies each and every allegation, matter and thing contained therein except insofar as such allegations or parts thereof are admitted in respondent's affirmative answer.

For further affirmative answer to the order to show cause and petition on file herein, respondent alleges:

I.

That on January 9, 1950, William Giron, Albert Gonzales and Cecil Coluya were, by information, filed in the Superior Court of the County of King in Criminal Cause No. 25721 of said county, charged with the crime of "Murder in the first degree"; that a [246] certified copy of the Information is attached to the return filed in the Supreme Court of the State of Washington.

II.

That on April 10, 1950, after having pleaded not guilty to the offense charge in the information, the jury trying the cause returned a verdict of guilty of murder in the first degree; that at said trial the petitioners herein were represented by counsel; that pursuant to said verdict of guilty, judgment and sentence was entered on the 28th day of April 1950, by James W. Hodson, Judge of the Superior Court for King County; that certified copy of the verdict, judgment and sentence and notice of appeal was mailed to the clerk of the supreme court on May 3, 1950; that warrant of commitment was issued on the 13th day of September 1950, all of which is shown by certified copies of judgment and sentence attached hereto and by reference made a part hereof the same as though fully set out; that said appeal was dismissed on the 8th day of September 1950. See Supreme Court Records, Causes Nos. 31445, 31446 and 31447, and by reference thereto made a part hereof.

III.

That the petitioners are being held in custody by respondent, John R. Cranor, under and by virtue of the aforesaid judgments and sentences and commitments.

Wherefore, respondent prays that the petition for a writ of habeas corpus filed herein be denied and the same be dismissed, and respondent be discharged from further answer herein.

DON EASTVOLD,
Attorney General
/s/ CYRUS A. DIMMICK,
Asst. Attorney General [247]

Duly Verified. [248]

In the Superior Court of the State of Washington
For the County of King

No. 25721

State of Washington, Plaintiff, vs. Albert Gonzales,
William Giron and Cecil Coluya, Defendants.

Judgment and Sentence

The Prosecuting Attorney with the Defendant Cecil Coluya and counsel W. Beardslee came into Court. The Defendant was duly informed by the Court of the nature of the information found against him for the crime of Murder in the First Degree, committed on or about the 7th day of January, 1950, of his arraignment and plea of "Not guilty of the offense charged in the information,"

of his trial and the verdict of the jury on the 10th day of April, 1950, "guilty of Murder in the First Degree."

The Defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, to which he replied he had none.

And no sufficient cause being shown or appearing to the Court, the Court renders its judgment: That whereas the said Defendant having been duly convicted on the 10th day of April, 1950 in this Court of the crime of Murder in the First Degree it is therefore Ordered, Adjudged and Decreed that the said Defendant is guilty of the crime of Murder in the First Degree and that he be punished by confinement at hard labor in the Penitentiary of the State of Washington for a maximum term of not more than His Natural Life, and a minimum term to be fixed by the Board of Prison Terms and Paroles.

The Defendant is hereby remanded to the custody of the Sheriff of said County to be by him detained and delivered into the custody of the proper officers for transportation to the said Penitentiary.

Done in open Court this 28th day of April, 1950.

/s/ James W. Hodson, Judge

Presented by: Signed F. A. Walterskirchen, Deputy
Prosecuting Attorney. [249]

[Title of Superior Court and Cause No. 25721.]

Judgment and Sentence

The Prosecuting Attorney with the Defendant Albert Gonzales and counsel J. E. Freeley, came into Court. The Defendant was duly informed by the Court of the nature of the information found against him for the crime of Murder in the First Degree, committed on or about the 7th day of January, 1950, of his arraignment and plea of "Not guilty of the offense charged in the information," of this trial and the verdict of the jury on the 10th day of April, 1950, "guilty of Murder in the First Degree."

The Defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, to which he replied he had none.

And no sufficient cause being shown or appearing to the Court, the Court renders its judgment: That whereas the said Defendant having been duly convicted on the 10th day of April, 1950, in this Court of the crime of Murder in the First Degree, it is therefore Ordered, Adjudged and Decreed that the said Defendant is guilty of the crime of Murder in the First Degree and that he be punished by confinement at hard labor in the Penitentiary of the State of Washington for a maximum term of not more than His Natural Life, and a minimum term to be fixed by the Board of Prison, Terms and Paroles.

The Defendant is hereby remanded to the custody

of the Sheriff of said County to be by him detained and delivered into the custody of the proper officers for transportation to the said Penitentiary.

Done in open Court this 28th day of April, 1950.

/s/ James W. Hodson, Judge

Presented by: Signed F. A. Walterskirchen, Deputy
Prosecuting Attorney. [250]

[Title of Superior Court and Cause No. 25721.]

Judgment and Sentence

The Prosecuting Attorney with the Defendant William Giron and counsel W. Beardslee came into Court. The Defendant was duly informed by the Court of the nature of the information found against him for the crime of Murder in the First Degree, committed on or about the 7th day of January, 1950, of his arraignment and plea of "Not guilty of the offense charged in the information," of his trial and the verdict of the jury on the 10th day of April, 1950, "guilty of Murder in the First Degree."

The Defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, to which he replied he had none.

And no sufficient cause being shown or appearing to the Court, the Court renders its judgment: That whereas the said Defendant having been duly convicted on the 10th day of April, 1950, in this Court of the crime of Murder in the First Degree, it is

therefore Ordered, Adjudged and Decreed that the said Defendant is guilty of the crime of Murder in the First Degree and that he be punished by confinement at hard labor in the Penitentiary of the State of Washington for a maximum term of not more than His Natural Life, and a minimum term to be fixed by the Board of Prison, Terms and Paroles.

The Defendant is hereby remanded to the custody of the Sheriff of said County to be by him detained and delivered into the custody of the proper officers for transportation to the said Penitentiary.

Done in open Court this 28th day of April, 1950.

/s/ James W. Hodson, Judge

Presented by: Signed F. A. Walterskirchen, Deputy
Prosecuting Attorney. [251]

Affidavit of Service by Mail attached. [252]

[Endorsed]: Filed July 14, 1953.

[Title of District Court and Cause.]

MOTION

Comes now respondent by and through his attorneys, Don Eastvold, Attorney General, and Cyrus A. Dimmick, Assistant Attorney General, and moves the court for permission to file as additional evidence in the above entitled cause a certified transcript of testimony of Albert Gonzales in Cause

25721 had in the superior court for the State of Washington for King County and a transcript of the testimony of Norbert William Larsen, Jr., in Cause No. 25721 in the superior court of the State of Washington for King County, on the ground and for the reason that respondent feels that the court should have this evidence in order to make a decision in the case now pending before the court, and to show that the petitioner did have the questions raised on the petition for writ of habeas corpus presented to the jury during the course of their trial in the superior court.

DON EASTVOLD,

Attorney General

/s/ CYRUS A. DIMMICK,

Assistant Attorney General [253]

[Endorsed]: Filed September 16, 1953.

[Title of District Court and Cause.]

ORDER

Respondent has submitted to this Court motion for permission to file, as additional evidence in the above entitled cause, a certified transcript of the testimony of petitioner Albert Gonzales in his State Court trial and a transcript of the testimony of certain witnesses for the plaintiff State of Washington, and also the testimony of Norbert William Larsen, Jr., a witness for the plaintiff in said trial. The Court has considered the same and, being advised in the premises,

It Is Now, Therefore, Ordered that the excerpts of testimony in the State Court trial of the petitioner Albert Gonzales and of other witnesses for the plaintiff State of Washington be received and admitted in evidence as Respondent's Exhibit 8, in the above entitled cause, and that the transcript of the testimony of Norbert William Larsen, Jr., a witness for the plaintiff State of Washington, in said State Court trial, be received and admitted in evidence, in the above entitled cause, as Respondent's Exhibit 9. The Clerk of the above entitled Court is hereby authorized and directed to inscribe the appropriate identifying marks on said exhibits.

Done by the Court this 16th day of September, 1953.

/s/ SAM M. DRIVER,
United States District Judge [254]

[Endorsed]: Filed September 16, 1953.

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated and agreed between Don Eastvold, Attorney General of the State of Washington, by Cyrus A. Dimmick, Assistant Attorney General of the State of Washington, and R. Max Etter, attorney for William Giron, Albert Gonzales and Cecil Coluya, petitioners above, that petitioners had, prior to the hearing of this cause, petitioned the Supreme Court of the State of Wash-

ington for a writ of habeas corpus, which was denied, and that said petitioners thereafter petitioned the Supreme Court of the United States for a writ of certiorari, which petition has heretofore and before the time of hearing in the present cause been denied.

Dated this 28th day of September, 1953.

/s/ R. MAX ETTER,
Attorney for Petitioners

DON EASTVOLD,
Attorney General of the State of
Washington

/s/ By CYRUS A. DIMMICK,
Assistant Attorney General of the
State of Washington

[Endorsed]: Filed October 2, 1953. [255]

[Title of District Court and Cause.]

OPINION OF THE COURT

Driver, District Judge.

William Giron, Albert Gonzales, and Cecil Coluya, inmates of the Washington State Penitentiary, serving life sentences for murder, petitioned this Court for writ of habeas corpus. The petition was filed in forma pauperis; but, at the hearing on the order to show cause, an attorney of their own selection appeared for petitioners. He contends that a coerced confession of Gonzales was admitted in

evidence and used to secure the conviction of petitioners in the State Court trial, in violation of the due process clause of the Fourteenth Amendment.

At the hearing and adjourned hearings on the order to show cause, Gonzales testified on behalf of the petitioners; and a number of police officers of the City of Seattle testified for the respondent, Superintendent of the State Penitentiary. The Court took the case under advisement, and the respondent subsequently was granted permission to place in evidence transcribed excerpts of the State trial testimony of Gonzales and of several witnesses for the State. It appears from the evidence thus presented that, while Gonzales was in their custody, the Seattle police obtained from him a written confession, implicating Giron and Coluya, and that the confession was received in evidence at the trial over objection. In accordance with the prescribed State practice, the confession was submitted to the jury, together with the conflicting testimony as to the circumstances [257] in which it was made; and the jury was called upon to determine whether it was obtained under the influence of fear, produced by threats.¹ Although only part of the trial testimony

¹ R.C.W. 10.58.030. Whether a confession should be rejected as induced by threats or fear of violence is a question of fact for the jury to decide, unless the State concedes that it was coerced, or the admitted facts are such as to establish coercion, in which case it is a question of law for the Court. *State vs. Seablom*, 103 Wash. 53; *State vs. Van Brunt*, 22 Wn. (2d) 103; *State vs. Meyer*, 37 Wn. (2d) 759.

is in evidence here, it is sufficient to warrant the assumption that there was substantial evidence, other than Gonzales' confession, that the murder was committed as the result of a pre-arranged conspiracy, in the execution of which, each of the petitioners participated. The general verdict of guilty did not disclose whether the jury accepted the confession as voluntary, or rejected it as coerced and found the petitioners guilty on evidence other than the confession.

Petitioner Gonzales gave notice of appeal from the judgment of conviction; but nothing further was done to perfect the appeal, and it was dismissed by the Washington State Supreme Court, without consideration of the merits. Subsequently, petitioners applied to the same Court for writ of habeas corpus, and the application was denied without opinion. The United States Supreme Court denied certiorari.

The first question presented is whether this Court should make its own independent finding whether Gonzales' confession was coerced. The issue of coercion was presented to the jury, but, as stated above, how the jury decided it was not disclosed. Whatever consideration may have been given to the issue by the State Supreme [269] Court in its denial of petitioners' habeas corpus application, that Court does not, under its well settled practice, call witnesses to testify before it in person.

In *Brown vs. Allen*, 344 U.S. 443, decided February 9, 1953, the Supreme Court had occasion to consider what weight a Federal District Court

should give to prior determination by the State Courts of the issues raised in a petition for habeas corpus. The majority opinion states that, although the Federal Court may, without a hearing, adopt the State Court's determination, if it appears "that the State process has given fair consideration to the issues and the offered evidence, and has resulted in a satisfactory conclusion," the Federal Court is not obliged or required to do so and * * * "a trial may be had in the discretion of the Federal Court or Judge hearing the new application. A way is left open to redress violations of the Constitution." (pp. 463, 464) If "a trial may be had," it follows that the Federal Court Judge, as a trier of the facts, may pass upon the credibility of the witnesses, resolve conflicts in the testimony, and make his own findings, as, otherwise, the trial would be pointless.²

It is established by the evidence in the instant case, without substantial dispute, that, on January 7, 1950, at about 1:30 a.m., petitioner Gonzales, a forty-one year old Philippino, with an eighth grade education, a limited [259] knowledge of the English language, and no prior acquaintance with American City Police methods, was arrested without a warrant and taken to the Seattle City Jail, where he was questioned regarding the shooting of one Fidel Molina, which had occurred about an hour before. The interrogation was continued off and on for a

² *Lisenba vs. California*, 314 U.S. 219, 237, 238; *Ashcraft vs. Tennessee*, 322 U.S. 143, 147; see also *Malinski vs. New York*, 324 U.S. 401, 404.

period of about twenty-four hours. Gonzales had no sleep, and he was not permitted to call a lawyer or communicate with his friends or with the Philippine Consul, although he requested permission to do so. No charge was filed against him, and he was not taken before a committing magistrate. At five o'clock, a.m., January 7, he signed a statement which did not amount to a confession. Early next morning, January 8, he was taken before two officers who had not previously questioned him and made the confession, which was reduced to writing and signed by him.

In the present proceedings, Gonzales testified as follows: Shortly after he was taken to the City Jail, he was questioned by two Seattle Detectives, whom he named and identified. They told him that he would have to make a statement and would do so, if he "knew what was good for him." When he demurred and asked to see his lawyer, they "got mad," and told him that he would not be permitted to "see anybody or call up anybody" until he made a statement. One of the detectives struck Gonzales in the lower abdomen four or five times with his fists. "It hurt awful." The same detective swore at him and threatened to kick his "god damn face!" He made both the first statement and the confession, because he was afraid that he would be beaten again if he did not [260] make them. The two officers who took his confession did not abuse him in any way, but, on the contrary, were kind and sympathetic.

The detectives whom Gonzales accused of mistreating him both testified in person in the present

case and denied that they ever struck or threatened him. They said that they saw him only on one occasion while he was in the City Jail. On the morning of his arrest, at the request of the Desk Sergeant, they had gone to an upper floor of the jail and brought him down for questioning.³

The Court has heard and observed the witnesses

³ From the excerpts of the trial testimony in evidence here, it appears that the detective whom Gonzales accused of resorting to physical violence did not say, in either his direct or rebuttal testimony, whether he had seen Gonzales in the jail, but his testimony was such as to leave with the jury the impression that Gonzales had not seen him prior to the trial and was able to identify him because of a court room incident, related in the following quotation from the detective's rebuttal testimony:

Q. Now, after you completed your testimony as a State's witness, did you have occasion to return here to the court room? A. I did.

Q. And I will ask you whether in the absence of the jury you had any conversation with defense counsel here in the court room?

A. I talked to Mr. Freeley.

Q. Will you state whether or not the defendant Gonzales was present when you talked with Mr. Freeley?

A. We were standing right behind Gonzales, the three, the three defendants were sitting where they are. And I came over to right about where Mr. Freeley is now.

Q. And during the course of that conversation, will you state whether or not your name was mentioned?

A. Mr. Freeley mentioned my name two or three times.

Q. Was that—would that have been within the hearing of the defendant Gonzales?

A. They all looked at me.

on the disputed issue of coercion and has endeavored to keep in mind the time-honored rules which jurors are instructed to apply in judging the credibility of witnesses. The Court thinks that, basically, Gonzales' story is a true story. Since the evaluation of conflicting testimony depends upon imponderable factors, which are difficult to analyze and to express,⁴ it is deemed sufficient merely to say the Court is convinced that Gonzales was beaten by the Seattle Police; that he was threatened with further physical violence, if he did not do their bidding; and that the fear, produced by such mistreatment, caused him to make the confession which was used against him at the trial. The officers who took his confession did not mistreat him, it is true, but there was no need for them to do so. He had been effec-

Mr. Beardslee: That would call for a conclusion, your Honor, please.

The Court: Overruled.

Q. Now, directing your attention to the early morning of January 7, 1950, did you on the morning of January 7, 1950, or at any other time strike the defendant Albert Gonzales?

A. No, sir, I did not.

Q. Did you on the morning of January 7, 1950, or at any other time slap the defendant Albert Gonzales?

A. I did not.

Q. Did you on the morning of January 7, 1950, or at any other time in any manner threaten the defendant Albert Gonzales?

A. I did not."

⁴ In the language of Mr. Justice Holmes, in *Chicago vs. B. & O. Ry. vs. Babcock*, 204 U.S. 585, 598, "many honest and sensible judgments * * * express an intuition of experience which outruns analysis and sums up many unnamed and tangled impressions; impressions which may lie beneath consciousness without losing their worth."

tively conditioned for confession by the softening-up process, administered by the two detectives. Gonzales' confession was not voluntary. It was the result of fear, induced by police brutality. [262]

Respondent maintains that, even though the confession be regarded as coerced, its submission to the jury would not invalidate the conviction of Gonzales, since there was other evidence sufficient to support the verdict of guilty. Respondent relies upon the case of *Stein vs. New York*, 346 U.S. 156, decided June 15, 1953. The cited case is distinguishable from the case at bar. There, a New York State Court, in a jury trial, found three defendants guilty of murder. The written confessions of two of them, implicating the third one, were admitted in evidence over objection. Defendants claimed that the confessions were coerced. Following a procedure generally similar to the Washington State practice, the New York Court heard the evidence with reference to coercion in the presence of the jury and left to the jury the determination of that issue. The jury returned a general verdict of guilty. There was competent evidence, other than the confessions, to sustain the verdict. The case came up by certiorari for direct review of the affirmance by the New York Court of Appeals of the trial court's judgment of conviction. There was no attack on the conviction by habeas corpus in the State Court or in Federal District Court. There was no finding by any court that the confession was coerced. In that posture of the case, the principal question, which the United States Supreme Court was called upon to decide,

was the constitutionality of the New York State procedure. [263]

The Court did not first consider whether there was evidence, other than the confessions, to support the jury's verdict. If respondent's contention here is sound, that should have been the initial inquiry, as it would have been the only one required to dispose of the case. Inquiry was first made into the circumstances under which the confessions were taken, in order to ascertain whether they would constitutionally support the convictions.⁵ In doing so, the Court explained that the scope of its review of factual issues is very narrow and that, only in exceptional circumstances, to prevent grave miscarriages of justice will the weight of conflicting evidence to support the judgment under examination be reviewed. "When an issue has been fairly tried and reviewed, and there is no indication that constitutional standards of judgment have been disregarded, we will accord to the state's own decision great, and in the absence of conceded facts, decisive respect."⁶ The Court considered the undis-

⁵ In the case under discussion, *Stein vs. New York*, *supra*, at page 179, the Court said: "Since these convictions may rest in whole or in part upon the confessions, we must consider whether they are a constitutionally permissible foundation for a finding of guilt.

"Inquiries on which this Court must be satisfied are: (1) Under what circumstances were the confessions obtained? (2) Has the use of the confessions been repugnant to 'that fundamental fairness essential to the very concept of justice?'"

⁶ *Ibid.*, p. 182.

puted facts and found that they failed to show that the confessions were the result of physical or psychological coercion, or that they were rendered inadmissible because of illegal detention of the accused. It concluded that, if the jury accepted the confessions as voluntary, the verdict would not, on that account, be objectionable on constitutional grounds.⁷ [264]

There remained for consideration by the Court in the Stein case the alternative possibility that the jury may have rejected the confessions as coerced. If so, could the finding of guilt constitutionally rest upon other sufficient evidence? The issue had been raised at the trial by defendants' request for an instruction that, if the jury found the confessions were coerced, it must return a verdict of acquittal. The instruction was refused by the trial court.

The issue was a difficult one for the Supreme Court to decide. It had said, in effect, in a number of prior cases that, if a coerced confession is admitted in evidence, the judgment of conviction must be set aside, even though the evidence, apart from the confession, might have been sufficient to support a finding of guilt.⁸ But to hold that rejection of the requested instruction constituted a violation of the Federal constitutional rights of the defendants would, in practical effect, condemn the long-stand-

⁷ *Ibid.*, pp. 182-188.

⁸ See *Lyons vs. Oklahoma*, 322 U.S. 596, 597 (footnote); *Malinski vs. New York*, 324 U.S. 401, 404; *Galleqos vs. Nebraska*, 342 U.S. 55, 63; *Stroble vs. California*, 343 U.S. 181, 190.

ing practice of New York and many other states of submitting to the jury the question whether a confession is voluntary. Moreover, the Court had never gone so far as to hold that the admission in evidence of a coerced confession required acquittal or discharge of the accused, but had sent the cases back to State Courts for retrial. The Court concluded that rejection of the requested instruction was not error.

The foregoing review of its salient features indicates that *Stein vs. New York* is not applicable to the [265] present case. Here, this Court, which is authorized to pass upon the issue, has found, as a matter of fact, that a coerced confession was used in a State Court trial to secure a conviction. *Stein* did not expressly overrule any of the earlier cases in which the Supreme Court unequivocally condemned the practice of securing confessions by force and violence and said that such enforced self-incrimination violates the due process clause of the Fourteenth Amendment, because it is fundamentally unfair and outrages the innate, deep-seated sense of justice of the American people. "The rack and torture chamber may not be substituted for the witness stand."⁹ *Gonzales'* conviction should be set aside. That does not mean, however, that he will be unconditionally released. The State may try him again, without the use of the confession, if it chooses to do so.¹⁰

⁹ *Brown vs. Mississippi*, 297 U.S. 278; 285-286; see also *Chambers vs. Florida*, 309 U.S. 227.

¹⁰ *Johnson vs. Cranor*, 143 Wash. Dec. 184.

Petitioners Giron and Coluya are in a different situation. As to them, no element of enforced self-incrimination is involved. They were named in Gonzales' confession, but the trial court instructed the jury that the confession of one of the defendants was not to be used or considered as evidence against other defendants, who might be implicated by the confession. The Supreme Court definitely has taken the position that, in the present circumstances, admission in evidence of the coerced confession of a defendant does not violate the [266] constitutional rights of a co-defendant.¹¹

The petition for writ of habeas corpus is denied as to petitioners Giron and Coluya and is granted as to petitioner Gonzales. Findings of fact, conclusions of law, and order will be entered accordingly. The order will provide that Gonzales be released, unless the State grants him a new trial within sixty days after the date of the order, or, if appeal is taken, within sixty days after receipt by the Clerk of this Court of a Mandate of the Court of Appeals affirming the order.

October 8, 1953. [267]

[Endorsed]: Opinion. Filed Oct. 14, 1953, as amended by order of Dec. 7, 1953.

¹¹ *Malinski vs. New York*, 324 U.S. 401, 410-412; see *Stein vs. New York*, 346 U.S. 156, 194.

[Title of District Court and Cause.]

PETITION FOR REARGUMENT

Comes now respondent by and through his attorneys, Don Eastvold, Attorney General, and Cyrus A. Dimmick, Assistant Attorney General, and respectively prays the court for permission to further argue to the court the question of whether or not the federal district court judge has jurisdiction or authority under the laws and constitution of the United States to consider a question of fact in a habeas corpus hearing when that question of fact has been properly presented and determined by a jury, duly impaneled in a state court proceedings.

DON EASTVOLD,
Attorney General

/s/ CYRUS A. DIMMICK,
Assistant Attorney General [270]

[Endorsed]: Filed December 15, 1953.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In the above-entitled matter the petitioners' Petition for a Writ of Habeas Corpus came on regularly for final hearing on the 13th day of July, 1953, following previous adjourned hearings, the petitioners appearing and being represented by their attorney, R. Max Etter, and the respondent, John R.

Cranor, appearing and being represented by his attorneys, Don Eastvold, Attorney General of the State of Washington, and Cyrus A. Dimmick, Assistant Attorney General of the State of Washington, and all parties having announced themselves ready for hearing, and the Court having heard the evidence introduced, both oral and documentary, and the Court having previously heard other evidence introduced, both oral and documentary, and the Court having heard the argument of counsel and having thereafter permitted the placing in evidence of various exhibits, transcribed testimony and documents upon the request and motion of the parties here involved, and having considered all of the matters and things, documents in evidence introduced herein, and the further argument of counsel, and the Court having rendered its written Memorandum Opinion and correction thereto, and being fully advised in the premises, makes the following [271]

Findings of Fact

I.

That petitioners, and each of them, were charged on January 9th, 1950, by information filed in the Superior Court of King County, in the State of Washington, in criminal cause No. 25721, with the crime of "murder in the first degree", and that thereafter petitioners pleaded "not guilty" and trial was had; that at said trial the petitioners were represented by counsel and that after the trial of said cause and the return of a verdict of "guilty" by the jury, sentence was entered on the 28th day of

April, 1950, by Honorable James W. Hodson, Judge of the Superior Court for King County; that a warrant of commitment to the penitentiary was issued on the 13th day of September, 1950, and said petitioners, and each of them, were, at the time of hearing, so confined in the Washington State Penitentiary by reason of said commitment and by one John R. Cranor, the Superintendent of said Washington State Penitentiary at Walla Walla, Washington.

II.

That following said conviction the petitioners gave notice of appeal, but nothing further was done to perfect said appeal, and the same was dismissed by the Supreme Court of the State of Washington without consideration of the merits; that thereafter petitioners petitioned the Supreme Court of the State of Washington for writ of habeas corpus and the Supreme Court of the State of Washington denied said application without opinion; that thereafter petitioners applied to the Supreme Court of the United States for certiorari and subsequent thereto the United States Supreme Court denied certiorari; that thereafter the said petitioners filed petition for writ of habeas corpus in the above entitled court claiming that an illegally coerced confession of petitioner Gonzales was admitted in evidence to procure the conviction of Gonzales and the other petitioners, Giron and Coluya, and that [272] said use of the coerced confession was in violation of the due process clause of the Fourteenth Amendment.

III.

That petitioner Gonzales herein is a Philippino of the age of approximately forty-one years, and that said petitioner has an eighth grade education and limited knowledge of the English language; and likewise said petitioner Gonzales had had no contact with criminal law enforcement agencies and had no prior knowledge, understanding or acquaintance with police methods employed in certain American cities.

IV.

That on January 7th, 1950, at about the hour of 1:30 o'clock a.m. the said petitioner Gonzales was arrested in a taxicab without a warrant and was taken to the Seattle City Jail where he was questioned by police officers of the police force of the City of Seattle regarding the shooting of one Fidel Molina, which shooting, it was stated to him, had occurred about one hour or more previous to said petitioner's arrest; that said petitioner Gonzales was taken to the office of a police officer, Austin Seth, held, questioned for a lengthy period of time by two police officers of the Police Department of the City of Seattle, to-wit, officers Thomas and Ryan; that at said time and during the questioning the petitioner Gonzales was placed in a jail cell but was still not advised as to the reason for his detention; that he was removed subsequently from his cell and taken into a room in the police headquarters in the City of Seattle where he was questioned, threatened and abused by certain police officers of the City of Seattle; that he was advised

during the period of his questioning that it would be better for him to make a statement and that he would do so if he "knew what was good for him"; that during the confinement of said petitioner he was not permitted to call anybody or to see anybody; he was not permitted to call a lawyer or [273] to communicate with his friends or to communicate with the Philippine Consul, though he frequently requested permission so to do; that likewise petitioner Gonzales was not afforded any hearing before a committing magistrate or justice of the peace during the period of his detention, although a magistrate was available during said time.

V.

That about five o'clock a.m. on January 7th, 1950, the said petitioner signed a statement which did not constitute a confession of petitioner's guilt; that petitioner Gonzales was further threatened and the interrogation was continued following the signing of the statement at five o'clock a.m. on January 7th, 1950; that during the progress of the questioning petitioner Gonzales was struck in the lower abdomen near the groin on several occasions, and was, on one occasion, thrown, shoved, struck or pushed over and against a part of the building and room in which Gonzales was confined and questioned; that a police officer of the City of Seattle threatened, during the interrogation, to kick the petitioner's "God damn face"; that petitioner was abused and assaulted in particular by one certain police officer, one Thomas, and that at or about two o'clock

a.m. on the morning of the 8th day of January, 1950, and following some twenty-four hours of interrogation, during which time petitioner Gonzales had been without sleep or rest, and during which time he was constantly questioned and abused by police officers of the police force of the City of Seattle, the said petitioner signed a statement implicating petitioner in the shooting of Fidel Molina and implicating the other petitioners, William Giron and Cecil Coluya.

VI.

That, petitioner signed the statement at two o'clock a.m. on January 8th, 1950, in the presence of two officers, Seth and Sprinkle, who did not abuse him, but were, in fact, sympathetic [274] and kind; that, however, the said petitioner was in fear of further abuse, physical assault and mistreatment when he signed the statement at two o'clock a.m. on January 8th, 1950, and his said statement was signed as the result of fear of said petitioner Gonzales for the safety of his person and his life and said statement or confession was the result of fear and was induced by the police brutality employed.

VII.

That said coerced statement of January 8th, 1950, of petitioner Gonzales was admitted in evidence over objection and used in the trial of all of said petitioners, but no proof of enforced confession or self-incrimination was shown concerning petitioners Giron and Coluya. In said trial there was substan-

tial evidence other than the confession upon which the jury could have based its verdict of "guilty" as to petitioner Gonzales.

From the foregoing Findings of Fact, the Court now makes the following

Conclusions of Law

I.

That petitioner Albert Gonzales is being illegally detained by reason of the above and foregoing and specifically by reason of the fact that his conviction and confinement rests upon confession induced by physical abuse, coercive threats and brutality.

II.

That petitioners William Giron and Cecil Coluya are not being held by reason of a conviction resting upon facts induced by physical abuse, coercive threats and brutality or enforced self-incrimination as to each or either of them.

III.

That petitioner Albert Gonzales is entitled to relief in this Court by virtue of the petition, affidavits and facts proved [275] in support thereof, and petitioners William Giron and Cecil Coluya are not entitled to relief on the basis of the petition or the facts proved in support thereof.

IV.

The petitioners, prior to the filing of their petition in this court, exhausted all of their remedies in the Courts of the State of Washington.

Done in open Court this 23rd day of December, 1953.

/s/ SAM M. DRIVER,

United States District Judge

Presented by:

/s/ R. MAX ETTER,

Attorney for Petitioners [276]

[Endorsed]: Filed December 23, 1953.

In the United States District Court for the Eastern
District of Washington, Southern Division

No. 739

In the Matter of the Application for a Writ of
Habeas Corpus of WILLIAM GIRON, AL-
BERT GONZALES and CECIL COLUYA,
Petitioners,

vs.

JOHN R. CRANOR, Superintendent of the Wash-
ington State Penitentiary at Walla Walla,
Washington. Respondent.

JUDGMENT AND ORDER

The above entitled cause came on regularly for hearing on the 13th day of July, 1953, following hearings held prior thereto before this Court, R. Max Etter, Esq., appeared for petitioners and Don Eastvold, Attorney General of the State of Washington, and Cyrus A. Dimmick, Assistant Attorney General of the State of Washington, appeared for

the respondent, John R. Cranor, and the Court having received evidence, both oral and documentary, during the trial, hearings and suspended hearings in said cause, and the Court having subsequently admitted certain documents and evidence proposed by petitioners and respondent, and having heard the argument of counsel, and having heretofore, on October 8th, 1953, rendered its Memorandum Opinion herein, and having corrected its said Memorandum Opinion on December 2nd, 1953, and having heretofore made and caused to be filed herein its written Memorandum and correction thereto, and written Findings of Fact and Conclusions of Law, and being fully advised in the premises,

Now, Therefore, in accord with said Findings of Fact and Conclusions of Law

It Is Ordered, Adjudged and Decreed: [277]

I.

That petition for writ of habeas corpus is granted to petitioner, Albert Gonzales, and it is ordered that said petitioner be released from confinement by the said respondent herein, unless, within sixty (60) days from the entry of this order the said State of Washington grants petitioner a new trial, or, in the event appeal is taken and the said order of this Court is affirmed, it is further ordered in that event, that petitioner be released from confinement by the said respondent herein within sixty (60) days after receipt by the Clerk of this Court of the said mandate of the Court of Appeals affirming said order, unless within said sixty days after receipt

of said mandate the said State of Washington grants petitioner Albert Gonzales a new trial.

It Is Further Ordered, Adjudged and Decreed that the petition for writ of habeas corpus of petitioners, William Giron, and Cecil Coluya, is denied.

Done in open Court this 23rd day of December, 1953.

/s/ SAM M. DRIVER,
United States District Judge

Presented by:

/s/ R. MAX ETTER,
Attorney for Petitioners [278]

[Endorsed]: Filed December 23, 1953.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that John R. Cranor, Superintendent of the Washington State Penitentiary at Walla Walla, Washington, respondent in the above entitled action, by and through his attorneys, Don Eastvold, Attorney General, and Cyrus A. Dimmick, Assistant Attorney General, hereby appeals from that part of the judgment entered on the 23rd day of December 1953, in the above entitled cause, granting a writ of habeas corpus to petitioner, Albert Gonzales. This appeal is from the United States District Court for the Eastern District of Washington, Southern Division, to the Cir-

cuit Court of Appeals for the Ninth Circuit, San Francisco, California.

DON EASTVOLD,
Attorney General
/s/ CYRUS A. DIMMICK,
Assistant Attorney General
Attorneys for Respondent [279]

[Endorsed]: Filed January 14, 1954.

[Title of District Court and Cause.]

MOTION FOR CERTIFICATE OF
PROBABLE CAUSE

Comes now John R. Cranor, respondent herein, through his attorneys, Don Eastvold, Attorney General and Cyrus A. Dimmick, Assistant Attorney General, and respectfully moves the above entitled court for a certificate of probable cause for appeal to the United States Circuit Court of Appeals for the Ninth Circuit. This motion is based upon the records and files made in the above entitled matter and the order of the court entered on the 23rd day of December 1953.

DON EASTVOLD,
Attorney General
/s/ CYRUS A. DIMMICK,
Assistant Attorney General,
Attorneys for Respondent [280]

[Endorsed]: Filed January 14, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF PROBABLE CAUSE

This matter is before the court on motion of the respondent for a certificate of probable cause, it appearing that the petitioner, Albert Gonzales, an inmate of the Washington State Penitentiary, was granted a writ of habeas corpus pursuant to an order entered on the 23rd day of December 1953, and it appearing to the court that there exists probable cause for the respondent to have such an appeal and that the same is taken in good faith, now therefore

In compliance with Section 2253 of Title 28, U.S.C.A. the court hereby certifies that there exists probable cause for an appeal in behalf of the respondent, John R. Cranor, to the United States Court of Appeals for the Ninth Circuit.

Done by the Court this 15th day of January, 1954.

/s/ SAM M. DRIVER,
U. S. District Court Judge

Presented by:

/s/ CYRUS A DIMMICK,
Assistant Attorney General [281]

[Endorsed]: Filed January 15, 1954.

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men By These Presents:

That we, John R. Cranor, Superintendent of Washington State Penitentiary, Walla Walla, Washington, the Respondent above named, as Principal, and the United Pacific Insurance Company, a corporation organized under the laws of the State of Washington, and authorized to transact the business of surety in the State of Washington, as Surety, are held and firmly bound unto the Government of the United States of America in the just and full sum of Two Hundred Fifty and no/100 Dollars (\$250.00), for which sum, well and truly to be paid, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 12th day of January, 1954.

The Condition of this Obligation is such, That,

Whereas, the above named Albert Gonzales, on the 23rd day of December, 1953, in the above entitled action and Court was granted a writ of Habeas Corpus

And Whereas, The above named Principal has heretofore given due and proper notice that he appeals from said decision and judgment of said District Court to the Circuit Court of Appeals for the Ninth Circuit.

Now, Therefore, If the said Principal, John R.

Cranor, Superintendent of Washington State Penitentiary, shall pay all costs and damages that may be awarded against him on the appeal, or on the dismissal thereof, not exceeding the sum of Two Hundred Fifty and no/100 Dollars (\$250.00), then this obligation to be void; otherwise to remain in full force and effect.

/s/ JOHN R. CRANOR,

[Seal]

UNITED PACIFIC INSURANCE
COMPANY

/s/ By WALTER H. OLSON,

Attorney-in-Fact

[282]

[Endorsed]: Filed January 18, 1954.

[Title of District Court and Cause.]

DESIGNATION OF RECORD

To: Stanley D. Taylor, Clerk of the above entitled court:

In preparing the record for appeal in the above entitled action, please include all pleadings, exhibits and transcript of testimony, except those pleadings and affidavits filed in support of the petitions of William Giron and Cecil Coluya.

DON EASTVOLD,

Attorney General

/s/ CYRUS A. DIMMICK,

Assistant Attorney General,

Attorneys for Respondent

[283]

Affidavit of Service by Mail attached.

[284]

[Endorsed]: Filed January 14, 1954.

[Title of District Court and Cause.]

APPELLEES' DESIGNATION OF RECORD

To: Stanley D. Taylor, Clerk of the above entitled court:

In preparing the record for appeal in the above entitled action, include the pleadings and affidavits filed in support of the petitions of William Giron and Cecil Coluya, and said pleadings and affidavits are designated by Appellees for inclusion in the record on appeal.

Dated: January 22nd, 1954.

/s/ R. MAX ETTER,

Attorney for Appellees

[285]

Affidavit of Service by Mail attached. [286]

[Endorsed]: Filed January 22, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF THE CLERK

United States of America,
Eastern District of Washington—ss.

I, Stanley D. Taylor, Clerk of the United States District Court for the Eastern District of Washington do hereby certify that the documents annexed hereto are the originals filed in the above cause as called for in Appellant's Designation of Record filed on January 14, 1954, and Appellee's

Designation of Record filed on January 22, 1954.

Motion for Leave to file in forma pauperis.

Order to file in forma pauperis.

Application Petitions for a Writ of Habeas Corpus.

Order to Show Cause.

Motion to Dismiss.

Affidavit of Service by Mailing Motion.

Order Continuing Return Date on Show Cause Order.

Affidavit of William Giron in support of petition.

Affidavit of Cecil Coluya in support of petition.

Affidavit of Albert Gonzales in support petition.

Record of Proceedings at the Hearings.

Return and Answer.

Affidavit of Service by Mailing Return.

Exhibits, Nos. 1 to 10, inclusive.

Motion of Respondent to file additional evidence in the form of exhibits.

Order granting permission to file additional exhibits.

Stipulation as to previous appeals.

Opinion of the Court.

Order amending page 2 of the Opinion.

Petition for Reargument.

Findings of Fact and Conclusions of Law.

Judgment and Order.

Notice of Appeal.

Motion for Certificate of Probable Cause.

Certificate of Probable Cause.

Bond for Costs on Appeal.

Designation of Record.

Appellee's Designation of Record.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at Yakima in said District this 17th day of February, 1954.

[Seal]

STANLEY D. TAYLOR,
Clerk of said Court

/s/ By THOMAS GRANGER,
Deputy

[Endorsed]: No. 14245. United States Court of Appeals for the Ninth Circuit. John R. Cranor, Superintendent of the Washington State Penitentiary at Walla Walla, Washington, Appellant, vs. Albert Gonzales, Appellee. Transcript of Record. Appeal from the United States District Court for the Eastern District of Washington, Southern Division.

Filed: February 19, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14245

In the Matter of the Application for a Writ of
Habeas Corpus of WILLIAM GIRON, AL-
BERT GONZALES and CECIL COLUYA,
Petitioners,

vs.

JOHN R. CRANOR, as Superintendent of Wash-
ington State Penitentiary, Walla Walla, Wn.,
Respondent.

STATEMENT OF POINTS AND DESIGNA-
TION OF RECORD

To: Paul P. O'Brien, Clerk of the above entitled
Court:

In printing the record for appeal in the above
entitled case please print all pleadings, exhibits,
transcript of testimony as shown by the transcript
of record on appeal on file in your court. The
Statement of Points relied upon by appellant are
as follows:

(1) Whether the federal court has authority to
try de novo any question decided pursuant to state
law and procedure, where the state law is not un-
constitutional.

(2) Whether the federal court can exercise juris-
diction except where errors of federal law have
been committed.

(3) Whether federal courts may impose their

judgment over that of a duly impaneled jury in a proper state court proceedings.

(4) Whether a federal court may assume a state court failed to consider a constitutional question which is required to be considered by state law.

(5) Whether the judicial power of the United States extends to an inquiry into the federal constitutional integrity of a criminal judgment of the courts of a state whose corrective judicial processes are adequate and effective.

(6) Whether a federal court may accept the uncorroborated and unsupported testimony of a state prisoner petitioner in the face of the testimony of unimpeached state witnesses.

DON EASTVOLD,

Attorney General

/s/ CYRUS A. DIMMICK,

Assistant Attorney General

[Endorsed]: Filed Apr. 19, 1954. Paul P. O'Brien,
Clerk.